SUPREME COURT, U.S.
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No. _____

In the

Supreme Court of the United States

October Term, 1998

MARTHA D. PAYNE, as mother for the minor child, CHRISTOPHER M. HICKS, and for ROBERT HICKS and BILLY HICKS, all minor children of the deceased STEVEN M. HICKS, by and personal representatives of the ESTATE OF STEVEN M. HICKS,

Petitioners,

-v-

BOB CHURCHICH, WILIAM PAPA, and COUNTY OF MADISON, ILLINOIS,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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162 pp

QUESTIONS PRESENTED

Steven Hicks was arrested on a warrant--issued without a judicial probable cause determination--for failure to appear on a disorderly conduct complaint. He was extremely intoxicated (.261-.285 mg/l) and depressed over his brother's funeral and his niece's death that same day. He was found unconscious, having scooted himself underneath an automobile in an apparent suicide attempt. He was arrested without any investigation of his circumstances and jailed alone without a phone call, monitoring, detoxification, or medical attention. Within an hour of being locked up, he killed himself. Petitioners, his children, filed 42 U.S.C. § 1983 claims.

I Does the Fourth Amendment govern the standard of conduct in the context of maltreatment occurring after arrest ends and pretrial detention begins?

II Do the liberty interests at stake govern the standard of conduct after arrest ends and pretrial detention begins, in the context of a maltreatment claim, regardless of which amendment is applied?

III Is the standard of conduct after arrest ends and pretrial detention begins, in the context of a maltreatment claim, heightened when the injury is suicide?

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The opinion of the United States Court of Appeals for the Seventh Circuit is reported at *Payne ex rel. Hicks v. Churchich*, 161 F.3d 1030 (7th Cir. 1998) (App. 1). The opinion of the Southern District Court of Illinois is not published (App. 36).

STATEMENT OF JURISDICTION

Judgment of the Seventh Circuit was entered on November 6, 1998 and it denied a timely petition for rehearing on January 12, 1999. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(l).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourth Amendment to the U. S. Constitution. (App. 104)
Fifth Amendment to the U. S. Constitution. (App. 104)
Fourteenth Amendment to the U. S. Constitution. (App. 104)
42 U.S.C. § 1983 (App. 103)
20 Illinois Administrative Code, Part 720 (App. 58-70)
20 Illinois Administrative Code, Part 701 (App. 71-94)
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Ill. Rev. Stat. 730, ¶ 125/1 et seq. (County Jail Act) (App. 49)
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Ill. Rev. Stat. 625, ¶ 5/11-501(a)(8) (Driving while under influence of alcohol, etc.) (App. 102)

Ill. Rev. Stat. 725, ¶ 5/103-3 (Right to communicate with attorney and family) (App. 102)
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28 U.S.C. § 1331 (App. 103)

STATEMENT OF THE CASE

District court jurisdiction was evoked under 28 U.S.C. § 1331, grounded upon 42 U.S.C. § 1983 (§ 1983) claims of violation of the Fourth, Fifth and Fourteenth Amendments.

This case came before the Seventh Circuit on dismissal by the district court. The grounds for dismissal were explicitly unsustained. However, the Seventh Circuit reviewed "the legal adequacy of the plaintiffs' complaint . . . de novo" and dismissed the § 1983 claims against Deputy Sheriff William Papa ("Papa") and the County of Madison, Illinois ("County"). *Payne ex rel. Hicks v. Churchich*, 161 F.3d 1030, 1038 (7th Cir. 1998).

A. Background Facts

On September 12, 1989, a Madison, Illinois *city* police officer signed a misdemeanor disorderly conduct complaint against Steven Hicks ("Hicks").[1] Two notices mailed to Hicks were returned unclaimed. On February 28, 1990, *without determining probable cause*, a judge issued a failure-to-appear warrant with a $2,000.00 bond. (SR 15,pp.61-9)

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[1] The complaint was not presented to a judge. Ill.Rev.Stat. ch. 725, para. 5/107-9 (1996) (App. 47). It was treated as a statutory Notice-to-appear procedure used for minor misdemeanors. Ill.Rev.Stat. ch. 735, para. 5/107-12 (1996) (App. 49).

On August 2, 1991, Hicks, upon arrival from Florida to attend his brother's funeral in Madison County, Illinois, learned his niece died that day. He was shocked, depressed, and morose over both deaths. Compounding this state, he became excessively inebriated. According to Michael Graham, M.D., Hicks:

> Would have impairment in judgment and emotional instability including diminished restraint. Such impairment would increase the probability of committing suicide when compared to the state of sobriety.

Based upon autopsy results, Dr. Graham calculated Hicks' blood-alcohol content at arrest to be .261-.285 mg/l.[2]

Experts describe Hicks' intoxication level as characterized by *loss of restraint and judgment*, slurred speech, marked muscular uncoordination, apathy, double vision, stupor, and disorientation. Papa *acknowledged* Hicks, at and after arrest, was confused, disoriented, staggering, and extremely drunk. (SR 15,pp.10-13)

Compelling evidence of Hicks' possible "mental disorder," was available to Papa.[3] Hicks was laying unconscious

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[2] In Illinois, impairment while driving is .080 mg/l. Ill.Rev.Stat. ch. 625, para. 5/11-501(a)(8). Dr. Graham's report was not submitted in the record before the federal claims were dismissed. His conclusions were incorporated in an affidavit submitted to the state court when Petitioners requested a stay of that court's summary judgment proceedings. (SR 29)

[3] State Department of Correction regulations, Illinois *Municipal Jail and Lockup Standards*, 20 Ill.Admin.Code 720.30(d), require special attention to a detainee "*who shows evidence of* . . . [a] "mental disorder." (App. 68)

with his head and upper torso scooted underneath a motel owner's car, on its *passenger side*. The owner parked his car such that when he left work, he likely would have driven over Hicks. (SR 14) Inadvertently, the motel owner discovered Hicks and notified the sheriff's department. Papa arrived, saw the situation and aroused Hicks. Despite at least a half-hour with Hicks, Papa obtained *only* Hicks' name and birth date. Admitting Hicks was "talkative;" Papa asked *no other questions*. He could not recall obtaining *any other information*. Papa took Hicks to the Madison *city lockup* and left him in custody of a dispatcher--who had no law enforcement authority. Hicks was incarcerated alone in a cell, with no monitoring, no detoxification, and no taking of information regarding his medical, mental, or physical condition. There was no questioning about Hicks' situation, the circumstances of his intoxication, nor his *positioning of himself underneath the car*. Hicks was not provided a phone call. Hicks was not told he could talk to his family.[4] Hicks was not asked if he could post the required Two-Hundred-Dollar bail. Hicks hung himself about an hour after his lockup. (SR 19;SR 15,p.11)

B. Claim Against Papa

Petitioners allege Papa violated Hicks' Fourth, or alternatively, Fifth and Fourteenth Amendments by failing to minimally investigate the circumstances, failing to provide adequate medical attention, and failing to maintain custody as

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[4] Ill.Rev.Stat. ch. 725, para. 5/103-3 provides the right to talk to an attorney and family members "within a reasonable time after arrival at the first place of custody." (App. 102).

required by law.[5] The complaint lists thirty-six lapses of duty by Papa. *See First (Ninth) Amended Complaint (Federal Court), Count I, ¶ 35(a-hh) and Count V, ¶¶ 47-77 (App. 111-14, 118-23).*

The Seventh Circuit ruled Papa's conduct must be judged on the Fourteenth Amendment's "deliberate indifference" standard. It found Petitioners had but "a single conclusory allegation" and concluded Papa's alleged conduct "constitutes negligence and nothing more." *Payne ex rel. Hicks v. Churchich*, 161 F.3d 1030, 1041 (7th Cir. 1998).

A plethora of evidence was pled and exists from which a factfinder ought to find *Papa deliberately indifferent and that he knew* Hicks was under a substantial risk of injury--including suicide. Papa's deposition revealed numerous admissions. He read and *understood* the Illinois Department of Corrections' *County Jail Standards*.[6] He *acknowledged* his *duties* to investigate and obtain information on an arrestee's medical condition to avoid risks of harm--including suicide. He *acknowledged* being trained to *recognize emotional and mental signs (including psychiatric problems) which trigger a need for immediate assistance and medical treatment*.[7] He *knew depression is a sign of a suicide risk and knew*

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[5] Petitioners' questions before this Court do not rely upon the statutory legal issue of whether Papa took Hicks to the proper jail facility. They only concern the constitutional standard of conduct.

[6] The *County Jail Standards* require jailors to know them. (App. 71-94). These standards reference suicide risks (AMA Standards App. 94-102) which portray a suicide situation the epitome of Hicks' circumstances. (SR 15,p.75;SR 23,pp.21-22) (App. 99-100)

[7] Ill.Rev.Stat. ch.50, para.705/7(1996) (App. 55).

intoxication can add to that risk. He *acknowledged* Hicks was *disoriented* and *highly drunk.* He *agreed the dispatcher was not a jailor, and he should not have had custody of Hicks.* He *foresaw* bad possibilities with that situation.

Papa admitted Hicks was talkative, but he did not ask Hicks any questions about his intoxication, his placing himself underneath the car, nor his situation. Shamelessly, Papa admitted what was evident throughout his testimony--he was deliberately indifferent ("It's none of my business!").[8]

C. Claim Against The County

The Seventh Circuit dismissed Petitioners' count against the County stating it was missing "a sufficient factual predicate." It did not allege the County "officials knew that placement in the city jail exposed Mr. Hicks to substantial risk of such injury." *Payne ex rel. Hicks*, 161 F.3d at 1043.

Petitioners' complaint contains highly specific factual allegations, largely contained in Count XI. (App. 135-140) It appears the *only* words missing from Petitioners' complaint are "substantial risk." Yet, Petitioners also pled counts against the County Sheriff Bob Churchich ("Churchich"), an elected *county officer* and custodian of the county jail. Churchich has the legal duty to report to the County regarding the jail's sufficiency. Ill.Rev.Stat. ch. 730, para. 125/2 and 125/12 (App. 49-51). The jail is funded by the County. Petitioners' allegations were clear that the *policy* of housing state-charged misdemeanants in *city lockups*, was a *mutual policy* instituted, promulgated, and approved by the sheriff and the

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[8] Papa's deposition reeks of "don't knows." Petitioners contend his denials, professed memory losses, and expressed attitudes proclaim his deliberate indifference. (SR 19)

County *together*. See Count VIII (App. 103-12). Petitioners allege Churchich's *awareness* and his *foreseeability* that housing Hicks in the city lockup would *create a substantial risk of self-harm to* Hicks. Petitioners allege the *ratification, support and approval of* Churchich's scheme to avoid unlawful overcrowding by assuming the risks of housing misdemeanants in inferior, risk-laden *city lockups*.

REASONS FOR GRANTING THE WRIT

I. THE CIRCUITS ARE IRRECONCILABLY SPLIT ON WHETHER THE FOURTH AMENDMENT APPLIES AFTER ARREST ENDS AND PRETRIAL DETENTION BEGINS.

A. Significance of the Conflict.

A review of the circuits exposes square conflict and uncertainty about the durational scope of the Fourth Amendment. This issue was expressly left open in *Graham v. Connor*, 490 U.S. 386, 395 n.10 (1989).

Resolution of this conflict is of utmost importance for three reasons. First, the conflict not only affects this case, but numerous medical-attention, personal-security and excessive-force pretrial-detainee cases nationwide. Second, the split in authority is unlikely to resolve itself soon. The conflict is neither limited to one or two renegade circuits, nor does it result from the circuits' lack of time to digest the issue. It has been ten years since *Graham*. Finally, the district Courts express utter confusion and dissension with their own and other circuits.

B. Circuits Applying Fourth Amendment Beyond Arrest.

The Second, Ninth, and Tenth Circuits conclude the Fourth Amendment protects an individual past the initial point of arrest. *See Powell v. Gardner*, 891 F.2d 1039, 1044 (2d Cir. 1989) (applying Fourth Amendment to claim of excessive force after transport to police station and declaring its applicable to pre-arraignment custody); *Hammer v. Gross*, 932 F.2d 842, 844-45 (9th Cir.), *cert. denied*, 502 U.S. 980 (1991) (applying Fourth Amendment to forced blood extraction occurring after arrest, while questioning "whether the Fourth Amendment still controls when the arrest ripens into detention"); *Austin v. Hamilton*, 945 F.2d 1155, 1159-60, 1162 (10th Cir. 1991) (applying Fourth Amendment to claim of excessive force during post-arrest, custodial stage, or pre-hearing), *abrogated on other grounds by Johnson v. Jones*, 515 U.S. 304 (1995) (on issue of collateral appeal). *But see Brown v. Doe*, 2 F.3d 1236, 1240 (2d Cir.), *cert. denied*, 510 U.S. 1125 (1993) (applying Fourteenth Amendment to pre-trial detainee's lack of medical attention and excessive force claims, without distinguishing *Powell*).

C. Circuits Not Applying Fourth Amendment Beyond Arrest.

The First, Fourth, Fifth, and Seventh Circuits refuse to apply the Fourth Amendment beyond the initial point of arrest. *See Massey v. Rufo*, 1994 WL 12326, *3 n.1 (1st Cir. Jan. 14, 1994) (per curium) (applying Fourteenth Amendment to pretrial detainee's claims of excessive force and involuntary drug administration); *Taylor v. McDuffie*, 155 F.3d 479, 482-83 (4th Cir. 1998) (holding Fourth Amendment does not extend to pretrial detainees in excessive-force context);

Brothers v. Klevenhagen, 28 F.3d 452, 457 (5th Cir. 1994) (applying Fourteenth Amendment to excessive-force claim of pretrial detainee killed while attempting escape).

The Seventh Circuit's position lacks predictability, sometimes tracking whether there is a judicial probable cause determination. *See, e.g., Luck v. Rovenstine*, 1999 WL 69628, *3 (7th Cir. 1999) (applying Fourth Amendment's "tight" limit because detainee held more than a week without any determination of probable cause) and *Armstrong v. Squadrito*, 152 F.3d 564 (7th Cir. 1998). Yet, in this case, the Court refused to consider the absence of a judicial probable cause determination underlying Hicks' warrant.

D. Fencesitting Circuits.

The Third, Sixth, Eighth and Eleventh Circuits have adopted approaches similar to *Graham v. Connor*, 490 U.S. 386, 395 n.10, leaving open the question of the durational scope of the Fourth Amendment. *See Torres v. McLaughlin*, 163 F.3d 169, 174 (3rd Cir. 1998) (acknowledging pretrial detention may implicate Fourth Amendment rights); *Holmes v. City of Massillon, Ohio*, 78 F.3d 1041, 1049 n.6 (6th Cir.), *cert. denied*, 117 S.Ct. 312 (1996) (noting Sixth Circuit's failure to decide Fourth Amendment's application to pretrial detainee, yet finding no plain error with Fourth Amendment instruction in excessive-force claim during booking); *Whitnack v. Douglas County*, 16 F.3d 954, 957 (8th Cir. 1994) (admitting not settled on a clearly binding standard for pretrial detainees, therefore using "deliberate indifference" for a pretrial detainee's conditions-of-confinement claim); *Roberts v. Ross*, 1993 WL 335758, *1 (8th Cir. Aug. 20 1993) (upholding Fourteenth Amendment excessive-force instruction in police station and ambulance context, yet suggesting

Fourth Amendment's potential applicability). The Eleventh Circuit, in plain error review, has upheld both Fourth and Fourteenth Amendment jury instructions for pretrial detainees. *See Vineyard v. County of Murray, Georgia*, 990 F.2d 1207, 1211 (11th Cir.), *cert. denied*, 510 U.S. 1024 (1993) (per curiam) (applying Fourteenth Amendment to excessive-force claim of pretrial detainee, but recognizing unclarity of whether Fourth Amendment also applies); *United States v. Myers*, 972 F.2d 1566, 1571-72 (11th Cir. 1992), *cert. denied*, 507 U.S. 1017 (1993) (holding no plain error in Fourth Amendment instruction for a pretrial detainee's excessive-force claim after arrest and during placement in jail cell, yet expressly not precluding Fourteenth Amendment applicability).

E. District Court Confusion.

Perhaps unessential to the discussion of conflict among circuits, it is noteworthy that district courts find their respective circuits' authority "ambiguous, at best." *Pyka v. Village of Orland Park*. 906 F.Supp. 1196, 1219 n.16 (N.D.Ill. 1995) (jail-suicide case analyzing split of circuit authority, noting Seventh Circuit unclarity, and concluding the Fourth Amendment applies after arrest, but before a formal hearing). *See also Freece v. Young*, 756 F.Supp. 699, 700 (W.D.N.Y. 1991) (applying Fourth Amendment to claim of denial of *medical treatment* after use of excessive force at stationhouse); *Jones v. County of DuPage*, 700 F.Supp. 965, 971-72 (N.D.Ill. 1988) (applying Fourth Amendment when a jail-suicide occurred before detainee brought to a judicial officer).

F. Conclusion.

This claim centers on the conduct of Papa at the time of arrest, following arrest, and during pretrial detention when Hicks died. The ultimate question is whether the standard should rely upon an objective consideration of the facts, or upon a judgment of the existence of a mindset--one derived from the concept of cruel and unusual punishments. The question requires scrutiny of the state's authority and societal needs versus individual sanctity and liberty. The balancing should consider that a presumptively innocent individual's freedom is being compromised.

This case, like many to come, needs this Court's supervision in order to provide clarity as to the significance of the rights involved, and thus, the appropriate standard.

II. THE SEVENTH CIRCUIT ERRED BY FAILING TO GIVE PROPER WEIGHT TO THE LIBERTY INTERESTS AT STAKE--NECESSARY MEDICAL ATTENTION AND A HUMAN LIFE.

Constitutional claims require a two-part analysis: (1) identification of the specific constitutional right allegedly infringed, and then; (2) determination of the standard of conduct. *Graham v. Connor*, 490 U.S. 386, 394 (1989). The process has not proven as simple as it sounds.

In this case, the Seventh Circuit held the standard derives from the Due Process Clause. *Payne ex rel. Hicks v. Churchich*, 161 F.3d 1030, 1039 (7th Cir. 1998). In the context of jail suicide, the Court concluded the standard is "deliberate indifference." *Id.* at 1041.

Graham was characterized as an "excessive force" case. However, it included allegations of a failure to provide medical care. In *Graham*, police officers assumed a strange-acting diabetic was drunk and ignored his pleas for sugar. Hicks presented a contextually analogous liberty interest. The situation at arrest *signalled* his possible need for medical attention.[9] Once Papa took him into custody, he became vested with the duty to protect Hicks from known or obvious risks. However, Papa treated Hicks the same, or worse, than those officers did Graham. His conduct allowed and promoted Hicks to kill himself. In this case, like *Graham*, the conduct at arrest and immediately thereafter is under consideration. The liberty interests at stake were Hicks' personal safety and his life. Hicks had not been before a judge on the charge and there had been no judicial probable cause determination. The Seventh Circuit failed to analyze the facts in the manner performed in *Graham*. Instead, it mechanically applied the Fourteenth Amendment and "deliberate indifference."[10]

The constitutional right to reasonable medical attention and safety during confinement was canonized in *Youngberg v. Romeo*, 457 U.S. 307 (1982). This Court has

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[9] Petitioners' complaint contains a later-removed allegation that upon being awakened Hicks exclaimed, "All I want to do is die," repeatedly. This allegation, although removed voluntarily by Petitioners, remains a potentially viable piece of evidence. (App. 109, Count I, para. 20)

[10] This Court in at least two other circumstances applied the Fourth Amendment in post-arrest contexts. *Albright v. Oliver*, 510 U.S. 266 (1994); *Gerstein v. Pugh*, 420 U.S. 103, 111 (1979). (In the context of extended restraint without a judicial probable cause determination, this Court concluded: "Both the *standards* and procedures for arrest *and detention* have been derived from the Fourth Amendment and its common-law antecedents.") (emphasis added)

acknowledged the *qualitative difference* in the state's duty to pretrial detainees, as compared to convicted prisoners. *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 244 (1983); *Bell v. Wolfish*, 441 U.S. 526, 535 n.16 (1979).

Youngberg's and *City of Revere's* reliance on the Due Process Clause, however, should not mandate that Hicks' liberty interests be analyzed under that clause. The meshing of these life/liberty personal security interests under the Fourth, Fifth, or Fourteenth Amendments was noted in *Ingraham v. Wright*, 430 U.S. 651, 672 n.42 (1976). The Seventh Circuit in *Villanova v. Abrams*, 972 F.2d 792, 797 (7th Cir. 1992) also once acknowledged this meshing concept.

Whether "deliberate indifference" or "objective reasonableness" applies should depend as much upon the liberty interests at stake, as upon the amendment invoked. This Court's analysis of other liberty interests in lesser-related situations demonstrates this rationale of closely examining the interests at stake. In *Bell v. Wolfish*, 441 U.S. 520, 569 (1979), this Court was concerned with the *conditions and restrictions of custodial living arrangements*, e.g., double bunking and a publisher-only rule. Obviously, the case involved detainees. Thus, the standard employed came from an analysis of whether the conditions were "punishment." *Youngberg* was concerned with *the more compelling liberty interest of an innocent individual being free from unnecessary restraint.* Thus, the standard used was "reasonableness," even though it too, was analyzed under the Due Process Clause. Rationally, a pretrial detainee's serious medical needs and safety concerns deserve a higher standard of protection than temporal needs, like double-bunking. Logically, the standard should be tighter. The deliberate indifference standard, borrowed

from the Cruel and Unusual Punishments Clause, is imbalanced and unjust.

The similarity between the right not to be subjected to excessive force and the right to adequate personal security and safety should require equal standards. The Seventh Circuit's and other circuit's failure to follow the guideline provided in *Graham* creates a great chasm of conflicting formulas which this Court needs to resolve.

III. THE SEVENTH CIRCUIT ARBITRARILY HEIGHTENED THE STANDARD OF CONDUCT BECAUSE THE INJURY WAS SUICIDE.

A. Federal Claims Against Papa Are Legally Adequate.

The Seventh Circuit relied on its own case law to conclude that *knowledge of the suicide risk*, not all other associated risks, is necessary to find liability. The Court stated:

> There is no allegation of Mr. Hicks' suicidal tendencies, no claim or evidence of past suicide attempts or warnings from family members of a mental disturbance and suicidal condition.

Payne ex rel. Hicks, 161 F.3d at 1042.

The Court does not acknowledge that Papa's failures of duty may foreseeably cause a myriad of harms--not just suicide. Such a view of a constitutional violation is too restrictive.

In Hicks' vulnerable condition, he could have been raped by other prisoners, died by aspiration on his own vomit, or suffered from another injury masked by his extreme intoxication. Suicide was but one of many substantial risks *known to Papa*. (SR 19) This Court, in *Farmer v. Brennan*, 511 U.S. 825, 843 (1994), while discussing the

> "substantial 'risk of serious damage to [a detainee's] future health,' . . . [concluded that] it does not matter whether *the risk* comes from *a single source or multiple sources*, any more than it matters whether a prisoner faces an excessive risk of attack *for reasons personal to him or because all prisoners in his situation face such a risk*." (emphasis added).

Duties and their associated risks are situational dependant. Determining what risks a state actor knew should be the trier-of-facts' function. It should not be decided at the pleading stage, by an appellate court, as a matter of law. Papa's failures to question, monitor, and seek medical attention are the crux of determining the constitutional right, not the specific, yet foreseeable, injury in this case--suicide.

B. Federal Claim Against County Is Legally Adequate.

The Seventh Circuit dismissed the federal claim against the County because of Petitioners' alleged failure to specifically assert that County officials "knew that placement in the city jail exposed Mr. Hicks to a substantial risk of such injury." *Payne ex rel. Hicks*, 161 F.3d at 1043. This reasoning violates the principle of *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163 (1993). It denies Petitioners a fair opportunity to litigate their

claim. The complaint read as a whole does not warrant the Seventh Circuit's dismissal at the pleading stage.

CONCLUSION

This case presents questions of exceptional importance. Accordingly, Petitioners ask this Court to grant their petition for a writ of certiorari.

Respectfully submitted,

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(Any footnotes trail end of each document)

MARTHA D. PAYNE, as mother for the minor child, CHRISTOPHER M. HICKS, and for ROBERT HICKS and BILLY HICKS, all minor children of the deceased Steven M. Hicks, by and personal representative of the ESTATE OF STEVEN M. HICKS, Plaintiff-Appellant, v. BOB CHURCHICH, WILLIAM PAPA and COUNTY OF MADISON, ILLINOIS, Defendants-Appellees.

No. 97-3344

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

April 16, 1998, Submitted
November 6, 1998, Decided

COUNSEL: For MARTHA D. PAYNE, Plaintiff - Appellant: Charles R. Douglas, SUMBITTED, Glen Carbon, IL USA.

For BOB CHURCHICH, WILLIAM PAPA, COUNTY OF MADISON, Defendants - Appellees: John L. Gilbert, REED, ARMSTRONG, GORMAN, COFFEY, GILBERT & MUDGE, Edwardsville, IL USA.

JUDGES: Before FLAUM, RIPPLE and DIANE P. WOOD, Circuit Judges.

OPINIONBY: RIPPLE

OPINION: RIPPLE, Circuit Judge. Between 1:00 and 4:04 on the morning of August 3, 1991, right after Steven Hicks

had been placed in custody in the holding cell of the City of Madison Police Department, he committed suicide. Martha Payne, representing the children and estate of Mr. Hicks, filed suit in state court, but the case was removed to federal court by the defendants when the plaintiffs' eighth amended complaint added a claim pursuant to 42 U.S.C. § 1983. The district court dismissed the plaintiffs' complaint on the grounds of res judicata and absolute immunity under the Illinois Local Governmental and Governmental Employees Tort Immunity Act ("Tort Immunity Act"). For the reasons discussed in the opinion that follows, we affirm in part the judgment of the district court, albeit on different grounds, and reverse and remand in part.

I

BACKGROUND

A. Facts

Shortly after midnight on August 3, 1991, Deputy Sheriff William Papa, Jr. ("Deputy Papa") of the Madison County Sheriff's Department was dispatched to the Two Brothers Motel in Cottage Hills, Illinois, to investigate a person sleeping under the motel owner's vehicle. Deputy Papa awakened the man, Steven Hicks, and moved him out from under the car. n1 Mr. Hicks was highly intoxicated (the complaint states that his blood alcohol content was in excess of 237 milligrams per liter) but awake; he was able to stand without assistance and could tell the Deputy his name and date of birth. Deputy Papa discovered through a computer search that Mr. Hicks was wanted on a warrant, issued by the City of Madison, for failure to appear and for disorderly conduct. Deputy Papa then placed Mr. Hicks under arrest

pursuant to the warrant and transported him to the City of Madison Police Department. Mr. Hicks cursed freely and called Deputy Papa names. At approximately 1:00 a.m., the Deputy transferred custody of Mr. Hicks to the City of Madison Police Department, which had issued the warrant, and resumed his normal patrol. At the police department, Mr. Hicks was locked in the holding cell. Sometime between the hours of 1:00 a.m. and 4:04 a.m., while in the custody of the City of Madison Police Department, Mr. Hicks died by suffocation after hanging himself with a blanket in the holding cell of the jail.

B. Procedural History

The children and estate of Steven Hicks brought state wrongful death and survival actions on November 12, 1991, in the Madison County Circuit Court. The original suit was brought against the City of Madison, the City's Board of Fire and Police Commissioners and Dennis Mize, the jailor and dispatcher for the City Police Department. It was not until the filing of the fourth amended complaint on July 31, 1992, that the present defendants--the County of Madison and the County's Sheriff, Bob Churchich, and Deputy Sheriff, William Papa--were added to the complaint. On December 21, 1992, the state court approved a settlement of $ 110,000.00 between the plaintiffs and the City defendants and dismissed them with prejudice.

The plaintiffs continued to file amended complaints in the local circuit court against the County defendants. On January 11, 1996, that state court entered summary judgment on the plaintiffs' seventh amended complaint. It granted judgment in favor of Deputy Papa on the ground that the Deputy Sheriff's conduct did not rise to the level of willful and wanton

conduct required for liability under the Tort Immunity Act. n2 The state court also entered summary judgment in favor of the County. It held that, pursuant to the Tort Immunity Act, n3 "since Deputy Papa is not liable, neither can be the County." State R.18 at 3. Concerning Sheriff Bob Churchich, the court offered several reasons for its entry of summary judgment in his favor. First, it noted, it had dismissed the plaintiffs' complaint against Sheriff Churchich in 1993 on the ground that the allegations of Deputy Papa's willful and wanton conduct did not impose liability on the Sheriff. It further ruled that summary judgment for the Sheriff was proper under the ruling of the Supreme Court of Illinois in Moy v. County of Cook, 159 Ill. 2d 519, 640 N.E.2d 926, 203 Ill. Dec. 776 (Ill. 1994), which held that a sheriff is an elected county officer and not an employee of the county government. However, the court reserved ruling as to Counts V and VI, which alleged willful and wanton conduct by the Sheriff, pending the completion of his deposition.

On April 23, 1996, the state circuit court granted the plaintiffs leave to file an eighth amended complaint. n4 The complaint included a federal claim, an allegation of the violation of constitutional rights under 42 U.S.C. § 1983. On May 2, 1996, the defendants removed the case to federal district court; on May 28, 1996, they filed a motion to dismiss. When the plaintiffs filed their ninth amended complaint that same day, the defendants moved to dismiss that complaint as well. The plaintiffs' later motion for leave to file a tenth amended complaint was denied.

On March 27, 1997, ruling on the plaintiffs' ninth amended complaint, the district court granted the defendants' motion to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6). It dismissed the plaintiffs' claims against Deputy

Papa by concluding that the state court's grant of summary judgment to Deputy Papa should be given res judicata or preclusive effect. n5 The district [*1036] court then determined that the County of Madison and County Sheriff Churchich were protected by the Tort Immunity Act's absolute immunity provision. n6 It dismissed the plaintiffs' claim with prejudice. On August 11, 1997, the court denied the plaintiffs' Rule 59(e) motion to amend the judgment. This appeal followed.

II

DISCUSSION

A.

This case arrived in federal court with the removal of the eighth amended complaint. The district court granted the plaintiffs leave to file a ninth amended complaint (to clean up the state court complaint, they told the court) but denied their motion for leave to file a tenth amended complaint. We review the district court's refusal to accept the tenth amended complaint for an abuse of discretion. See Crim v. Board of Educ. of Cairo Sch. Dist. No. 1, 147 F.3d 535, 547-48 (7th Cir. 1998) (finding no abuse of discretion in the court's refusal to accept a second amended complaint); General Elec. Capital Corp. v. Lease Resolution Corp., 128 F.3d 1074, 1085 (7th Cir. 1997) (finding no abuse of discretion in denial of fifth amendment to complaint).

Federal Rule of Civil Procedure 15(a) permits a party to amend its pleading once as a matter of course; after that amendment, a party must request leave of court to file an amended pleading. See Crim, 147 F.3d at 547-48. The rule states that "leave shall be freely given when justice so

requires." Fed. R. Civ. P. 15(a). The Supreme Court has stated that leave to amend need not be given if there is an apparent reason not to do so, such as "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment." Foman v. Davis, 371 U.S. 178, 182, 9 L. Ed. 2d 222, 83 S. Ct. 227 (1962).

The district court did not abuse its discretion in deciding not to allow further amendment of the complaint. The magistrate judge noted the plaintiffs' casual acknowledgment of their seriously flawed previous complaints and suggested that they had been dilatory in prosecuting their case. He also noted that the plaintiffs had acknowledged flaws and deficiencies in their ninth amended complaint; in the proposed tenth amended complaint, according to the defendants, the plaintiffs voluntarily had removed the allegations based on agency, cleaned up mistakes and typographical errors and added new theories of recovery. The magistrate judge believed that the adding of new claims and a new theory would prejudice the defendants. He concluded: "The plaintiffs are . . . keeping the defendants on a litigation treadmill." R.33 at 3. The district court expressed full agreement with the magistrate judge's assessment. It determined that the plaintiffs had had an adequate opportunity, by filing ten complaints, to "get it right," and concluded that, "after all, ten bites at the apple are enough." R.39 at 1.

There is an ample basis for the district court's conclusion that the plaintiffs have been dilatory in prosecuting their case. At the same time that the defendants removed the eighth

amended complaint and filed a motion to dismiss it, the plaintiffs filed their ninth amended complaint. The defendants responded with a motion to dismiss that complaint. Five months later, the plaintiffs attempted to amend the complaint again. The plaintiffs admit that their "attorney may have been too meticulous, by submitting unnecessary remakes," but they then complain that they had been "made to suffer from defendants' specious allegations of burdensomeness." Plaintiffs' Reply Br. at 7. The plaintiffs have admitted, in essence, their "repeated failure to cure deficiencies by amendments previously allowed." Foman, 371 U.S. at 182; see General Elec. Capital Corp., 128 F.3d at 1085 (finding no abuse of discretion in dismissal of complaint after plaintiff repeatedly failed to remedy same deficiency). Not irrelevant is the substantial burden to both the opposing party and to the court in having to comb through each amended complaint to find the changes from one complaint to the next. The district court in no way abused its discretion in denying the plaintiffs leave to tender their tenth amended complaint.

B.

The district court applied the principle of res judicata to bar the claims against Deputy Papa. In dismissing those claims, the court reasoned that the state court's grant of summary judgment in favor of Deputy Papa had ended the litigation against Papa. It then gave to the state court judgment "the same full faith and credit" that the courts of Illinois would give it pursuant to 28 U.S.C. § 1738 and held that res judicata applied to bar any other claims against him that arose out of the incident in question.

The district court erred in relying on res judicata to dismiss the federal claims against Deputy Papa. At the outset, it is important to keep in mind that this situation does not involve two separate lawsuits, one in state court and another in federal court. Rather, it involves one suit that originated in state court and that was removed to federal court. n7 The doctrine of res judicata limits relitigation of an issue in a subsequent suit. The doctrine of law of the case limits relitigation of an issue at a subsequent stage of the same suit. n8 See Rekhi v. Wildwood Indus., Inc., 61 F.3d 1313, 1317-18 (7th Cir. 1995).

In the context of removal, once the case is in federal court, the state court orders issued prior to removal are not conclusive but remain binding until they are set aside. See 28 U.S.C. § 1450 (providing that all "orders and other proceedings had in such [state court] action prior to its removal shall remain in full force and effect until dissolved or modified by the district court"); Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, 415 U.S. 423, 436, 39 L. Ed. 2d 435, 94 S. Ct. 1113 (1974) ("The 'full force and effect' provided state court orders after removal of the case to federal court was not intended to be more than the force and effect the orders would have had in state court."). n9 As the Supreme Court explained in Granny Goose Foods, by providing that the state court proceedings are effective in federal court, judicial economy is promoted, and the parties' rights are protected. See 415 U.S. at 435-36. The district court therefore should not have relied on the doctrine of res judicata in deciding the case. Instead, it should have evaluated the state court proceedings under the law of the case doctrine and, under the principles of that

doctrine, declined to revisit any matters that presented no reason for revisitation.

C.

The district court dismissed the plaintiffs' claims against the two other defendants, the County of Madison and Sheriff Churchich, on the ground that they enjoyed absolute immunity as a matter of state law under the Illinois Tort Immunity Act. In this regard, the district court also erred. Immunity on the federal claims, those brought pursuant to 42 U.S.C. § 1983 in this case, is a matter of federal law. As the Supreme Court made clear in Howlett v. Rose, 496 U.S. 356, 110 L. Ed. 2d 332, 110 S. Ct. 2430 (1990), "the elements of, and the defenses to, a federal cause of action are defined by federal law." Id. at 375. The Court noted in particular that "municipal defenses--including an assertion of sovereign immunity--to a federal right of action are, of course, controlled by federal law." Id. at 376. In the case before us, however, the district court failed to consider whether the governmental defendants were liable or immune under federal law for their alleged federal constitutional violations. Therefore we cannot accept the district court's rationale for dismissing the claims against Sheriff Churchich and the County of Madison.

D.

The earlier discussion makes clear that we cannot sustain the judgment of the district court on the two bases given by the district court. Nevertheless, we may affirm that judgment on any ground supported by the record. See Centres, Inc. v. Town of Brookfield, Wis., 148 F.3d 699, 703 (7th Cir. 1998); Bombard v. Fort Wayne Newspapers, Inc., 92 F.3d 560, 562

(7th Cir. 1996). Indeed, "in the review of judicial proceedings the rule is settled that, if the decision below is correct, it must be affirmed, although the lower court relied upon a wrong ground or gave a wrong reason." Helvering v. Gowran, 302 U.S. 238, 245, 82 L. Ed. 224, 58 S. Ct. 154 (1937) (citing cases). In this case, with a seven-year record before us and essentially legal issues to be resolved in this appeal, we believe that, as a prudential matter and in the interests of judicial economy, we should examine the entire record and should affirm on an alternate basis if the record reveals that the district court's decision was correct. See Golden Nugget, Inc. v. American Stock Exch., Inc., 828 F.2d 586, 590 (9th Cir. 1987) (per curiam); Lum Wan v. Esperdy, 321 F.2d 123, 125-26 (2d Cir. 1963).

1.

We begin with a review of the federal counts against Deputy Papa. Our review of the legal adequacy of the plaintiffs' complaint is de novo.

We turn first to the specifics of the federal constitutional claims set forth in the operative complaint. Counts I and II, one cast in terms of the Fourth Amendment and the other one cast in terms of the Fourteenth Amendment, contain essentially the same allegations. The plaintiffs' complaint alleges that Deputy Papa, working as a sheriff's deputy for Madison County, acted improperly when arresting and detaining Mr. Hicks. The Deputy awoke Mr. Hicks (who had a blood alcohol content in excess of .237 and was sleeping with his body partly under an automobile), determined Mr. Hicks' name and birth date and learned that there was an outstanding warrant for Mr. Hicks' arrest. The Deputy then arrested and took custody of Mr. Hicks pursuant to that

warrant and delivered him to the Madison city jail. The complaint alleges Deputy Papa's negligence in failing to treat Mr. Hicks humanely, to provide him medical attention and constant monitoring and supervision, to investigate Mr. Hicks' level of intoxication and medical condition, and to recognize that Mr. Hicks posed a substantial risk of self-harm. As a proximate result of these acts, the complaint asserts, Steven Hicks died by hanging himself in the Madison city jail. The complaint further alleges, in conclusory fashion, that Deputy Papa's conduct was "deliberately indifferent and in callous disregard of" the constitutional rights of Steven Hicks.

In assessing these allegations, we begin with the basic proposition:

> When considering whether the defendants are subject to § 1983 liability, we follow our long-settled rule: "Section 1983 creates a cause of action based on personal liability and predicated upon fault; thus, liability does not attach unless the individual defendant caused or participated in a constitutional deprivation." Vance v. Peters, 97 F.3d 987, 991 (7th Cir. 1996), cert. denied, 137 L. Ed. 2d 1030, 117 S. Ct. 1822 (1997) (quoting Sheik-Abdi v. McClellan, 37 F.3d 1240, 1248 (7th Cir. 1994), cert. denied, 513 U.S. 1128, 130 L. Ed. 2d 882, 115 S. Ct. 937 (1995)). "The purpose of § 1983 is to deter state actors . . . from using a 'badge of authority' to deprive individuals of rights guaranteed by the Constitution." Fries v. Helsper, 146 F.3d 452, 457 (7th Cir. 1998) (quoting Wyatt v. Cole,

> 504 U.S. 158, 161, 118 L. Ed. 2d 504, 112 S. Ct. 1827 (1992)), cert. denied, 1998 U.S. LEXIS 6489, 67 U.S.L.W. 3257, 1998 WL 467352 (U.S. Oct. 13, 1998) (No. 98-219). In alleging a claim under § 1983, plaintiffs must allege facts sufficient to show that the defendants deprived them of a right or an interest secured by the Constitution or laws of the United States and that the defendants were acting under color of state law. See Stevens v. Umsted, 131 F.3d 697, 700 (7th Cir. 1997). Here, there is no question that the defendants are state actors. Our focus therefore must be on whether Mr. Hicks was deprived by these defendants of a right or an interest secured by the Constitution.

In Graham v. Connor, 490 U.S. 386, 394, 104 L. Ed. 2d 443, 109 S. Ct. 1865 (1989), the Supreme Court counseled that, as a threshold matter, a court ought to review the presented claims and to determine the specific constitutional rights allegedly infringed. This determination identifies "the appropriate analytical lens through which facts are to be viewed." Wilson v. Williams, 83 F.3d 870, 874 (7th Cir. 1996). In this case, the plaintiffs have cast their complaint in terms of violations of Mr. Hicks' Fourth, Fifth and Fourteenth Amendment rights. Upon examination of the allegations of each of these counts, however, it is clear that Mr. Payne essentially is alleging maltreatment while in custody as a pretrial detainee. Under the prevailing case law, such allegations are treated as claims under the Due Process Clause of the Fourteenth Amendment. n10 We shall therefore review these allegations under that analytical framework.

Mr. Hicks, brought into the jail pursuant to an outstanding warrant, was a pretrial detainee, a person "between the status of free citizen and convicted prisoner." Wilson, 83 F.3d at 875. A pretrial detainee has not been found guilty of a crime and therefore may not be "punished" by the state. See Bell v. Wolfish, 441 U.S. 520, 535, 60 L. Ed. 2d 447, 99 S. Ct. 1861 (1979). With respect to his treatment while in custody, the detainee is protected by the Due Process Clause of the Fourteenth Amendment; that protection is at least as great as the protection a convicted prisoner is afforded under the Eighth Amendment. n11 See City of Revere v. Massachusetts Gen. Hosp., 463 U.S. 239, 244, 77 L. Ed. 2d 605, 103 S. Ct. 2979 (1983); Bell, 441 U.S. at 535 n.16. As the Supreme Court made clear recently in County of Sacramento v. Lewis, 140 L. Ed. 2d 1043, 118 S. Ct. 1708 (1998), a detainee therefore is protected from the "deliberate indifference" of prison officials: Since it may suffice for Eighth Amendment liability that prison officials were deliberately indifferent to the medical needs of their prisoners, see Estelle v. Gamble, 429 U.S. 97, 104, 50 L. Ed. 2d 251, 97 S. Ct. 285 (1976), it follows that such deliberately indifferent conduct must also be enough to satisfy the fault requirement for due process claims based on the medical needs of someone jailed while awaiting trial. County of Sacramento, 118 S. Ct. at 1718. The Supreme Court distinguished among three levels of fault--negligence, deliberate indifference and conduct that shocks the conscience. It stated that "liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process," id., that "deliberate indifference" is the standard to employ "when actual deliberation is practical" (such as in the custodial situation of a prison), id. at 1719, and that "a much higher standard of fault than deliberate indifference has to be shown for officer liability in

a prison riot" or in a high-speed chase, id. at 1720. n12 That higher standard is the "shocks-the-conscience" test. Id.

We have applied the deliberate indifference standard to a pretrial detainee's § 1983 claim. See Antonelli v. Sheahan, 81 F.3d 1422, 1428 (7th Cir. 1996). When the § 1983 claim is based on a jail suicide, the degree of protection accorded a detainee is the same that an inmate receives when raising an inadequate medical attention claim under the Eighth Amendment-- deliberate indifference. See Mathis v. Fairman, 120 F.3d 88, 91 (7th Cir.) ("A prison official violates the Eighth Amendment (which applies to persons who have been convicted) and the due process clause of the Fourteenth Amendment (which applies to pre-trial detainees . . .) when he is deliberately indifferent to a substantial risk of serious harm to an inmate . . . ."), cert. denied, 139 L. Ed. 2d 491, 118 S. Ct. 603 (1997); see also Estate of Cole v. Fromm, 94 F.3d 254, 259 & n.1 (7th Cir. 1996), cert. denied, 117 S. Ct. 945 (1997); Hall v. Ryan, 957 F.2d 402, 405-06 (7th Cir. 1992). A detainee establishes a § 1983 claim by demonstrating that the defendants were aware of a substantial risk of serious injury to the detainee but nevertheless failed to take appropriate steps to protect him from a known danger. See Mathis, 120 F.3d at 91 (stating that "a finding of deliberate indifference requires evidence that the official was aware of the risk and consciously disregarded it nonetheless"); Estate of Cole, 94 F.3d at 259 (requiring proof of "deliberate indifference" and rejecting proof merely of "negligent treatment").

When we turn to the allegations of the complaint, it is clear that, even when read so that all inferences are made in favor of the plaintiffs, no due process claim is stated. There is a single conclusory allegation that Deputy Papa's conduct was

"deliberately indifferent and in callous disregard" of Mr. Hicks' constitutional rights. Nevertheless, the plaintiffs' specific factual allegations concerning Deputy Papa's conduct do not state actions that could possibly constitute "deliberate indifference" or an "intentional or criminally reckless manner" n13 during the arrest or transport of Mr. Hicks to the Madison city jail. n14 Although the complaint contains the single cursory allegation that Deputy Papa's conduct was "deliberately indifferent and in callous disregard" of Mr. Hicks' constitutional rights, the conduct alleged to support that claim constitutes negligence and nothing more. None of the factual allegations could support a claim that Deputy Papa was deliberately indifferent to, or acted in conscious disregard of, a known or substantial risk of harm to Mr. Hicks. "[A] finding of deliberate indifference requires evidence that the official was aware of the risk and consciously disregarded it nonetheless." Mathis v. Fairman, 120 F.3d 88, 91 (7th Cir. 1997). As we have noted earlier, our cases dealing with § 1983 claims based on a pretrial detainee's suicide have held that a state actor like Deputy Papa can be held liable for a detainee's suicide only if the defendant was deliberately indifferent to a substantial suicide risk.

In this case, the plaintiffs do not allege that any of the defendants knew that Mr. Hicks posed a danger to himself. However, they do allege that Deputy Papa should have been aware that Mr. Hicks intended to commit suicide because his tattoo questioned life and because he cursed angrily. We have held that knowledge of a substantial risk of suicide can be inferred from the obviousness of the risk. See Estate of Cole, 94 F.3d at 260. However, we do not believe that the allegations in the complaint about Mr. Hicks' conduct and tattoo message, without more, indicate an obvious,

substantial risk of suicide. There is no allegation of Mr. Hicks' suicidal tendencies, no claim or evidence of past suicide attempts or warnings from family members of a mental disturbance and suicidal condition. See Hall, 957 F.2d at 404-05. Mr. Hicks' behavior was not alleged to be increasingly bizarre, erratic or wild. See id.; State Bank of St. Charles, 712 F.2d at 1146; cf. Estate of Cole, 94 F.3d at 262 (holding that the same standard applies to allegations of improper medical treatment as evidence of "deliberate indifference"). None of the facts alleged in this case--Mr. Hicks' intoxication, cursing and tattoo--raises an issue of whether Deputy Papa had knowledge of, or even particular reason to suspect, a substantial risk of suicide on Mr. Hicks' part. Cf. State Bank of St. Charles, 712 F.2d at 1146 (determining that the officers' knowledge that the detainee as intoxicated, uncooperative, violent and "acting in a 'freaky' manner is not synonymous with knowing that the violence might become self-directed"). Indeed, the allegations set forth acts and conduct that, if established, could constitute only negligence. See Mathis, 120 F.3d at 92 (holding that the county officials' negligent failure to keep a closer eye on a pretrial detainee who committed suicide did not support the requisite finding of deliberate indifference). Because "liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process," County of Sacramento v. Lewis, 140 L. Ed. 2d 1043, 118 S. Ct. 1708, 1718 (1998), the alleged behavior of Deputy Papa does not rise to the level of deliberate indifference and thus cannot support a constitutional claim under § 1983. Because negligence is "a state of mind inconsistent with the requisite breach of duty necessary to constitute a constitutional deprivation," claims based on particular allegations of negligence must be dismissed. Antonelli, 81 F.3d at 1429.

Therefore we must affirm the dismissal of Counts I and II. n15 2.

The complaint's Count XI, the last federal claim, appears to allege that Madison County violated the Constitution by having failed to maintain an adequate confinement facility. The complaint alleges that the Madison County jail was overcrowded and that the County had a duty to provide a sufficient jail facility. It also claims that the County was deliberately indifferent to the rights of Steven Hicks and other prisoners and detainees because it failed to provide sufficient jail space and to provide funds for such space. The proximate result of the County's failures was that Steven Hicks was housed in a city lockup where he was not sufficiently protected from self-inflicted injuries and where, therefore, he committed suicide. "The actions of the responsible county officials and county board violated Steven Hicks' constitutional rights of due process and equal protection under the Fourteenth Amendment." Count IX, P 31.

As we previously have noted, the district court appears to have been under the misapprehension that the County enjoyed the same immunity with respect to this count that it enjoyed under state law. But immunity under § 1983 is a matter of federal law. See Howlett v. Rose, 496 U.S. 356, 375, 110 L. Ed. 2d 332, 110 S. Ct. 2430 (1990) ("The elements of, and the defenses to, a federal cause of action are defined by federal law.").

Under § 1983, a municipality can incur liability if it maintains a policy that sanctions the maintenance of prison conditions that infringe upon the constitutional rights of the prisoners. See Baskin v. City of Des Plaines, 138 F.3d 701, 704-05 (7th Cir. 1998) (recognizing that a municipality can

be said to have violated an individual's constitutional rights by its "express policy that, when enforced, causes a constitutional deprivation," or by its "widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well settled as to constitute a custom or usage with the force of law"). This count alleges that the County maintained its own confinement facility with deliberate indifference and callous disregard n16 for the welfare of the inmates and thus caused this prisoner to be housed in conditions that led to his demise. It does not allege, however, a sufficient factual predicate for the essential element that the County's placement of Mr. Hicks in the city jail was done pursuant to a policy that evinces reckless disregard for his safety. The count alleges that Mr. Hicks was not incarcerated in the county facility but in the city lockup. However, more is needed. The pleading on this Count does not allege adequately that those responsible for county policy permitted the placement of county prisoners in the city facility despite the risk that such placement would result in serious harm to the prisoners' safety. Although the complaint states that responsible officials knew that better protection against self-inflicted injuries was available at the overcrowded county facility, it does not allege that those officials knew that placement in the city jail exposed Mr. Hicks to a substantial risk of such injury. There is no factual allegation to support the proposition that the placement of Mr. Hicks in the city jail was done with depraved indifference to his safety. Without such an allegation, this count is inadequate and must be dismissed.

E.

Because the district court disposed of all the federal claims, it then focused on the supplemental state claims. It had the

discretion to remand these claims to the state court or to address them itself. See Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 357, 98 L. Ed. 2d 720, 108 S. Ct. 614 (1988). Indeed, when the district court dismisses all federal claims before trial, the usual and preferred course is to remand the state claims to the state court unless there are countervailing considerations. See Wright v. Associated Ins. Cos., Inc., 29 F.3d 1244, 1251 (7th Cir. 1994). Although the district court did not articulate a reason, it appears that, in this case, it decided to address the merits because the state claims could be easily decided on the record before [*1044] it. We turn therefore to the state claims and the district court's disposition of them. n17

Count III alleges that County Sheriff Churchich is vicariously responsible for the conduct of his agents, including Deputy Papa and Madison city jailor Mize. To the extent that the rambling language of this count might be construed to allege vicarious liability for federal constitutional violations committed by others, it fails because, as we have already noted, § 1983 does not permit vicarious liability. See Davis v. Zirkelbach, 149 F.3d 614, 619 (7th Cir. 1998); Antonelli v. Sheahan, 81 F.3d 1422, 1428 (7th Cir. 1995). To the extent that it alleges vicarious liability under state law, the Sheriff is immune under the provisions of the Illinois Tort Immunity Act. n18 See 745 ILCS 10/2-204.

Count IV alleges that Madison County failed to provide and fund a sufficient jail facility for misdemeanant arrestees and to protect its inmates against self-inflicted harm. It further alleges that Sheriff Churchich, with the support and approval of the County, implemented a policy of housing misdemeanant arrestees in city lockups, in violation of state statutes, common law and applicable regulations, when the

county jail was better equipped and its personnel better trained to provide sufficient protection. It claims that the County's acts in failing to provide proper jail space and maintenance for misdemeanant arrestees "were deliberately indifferent and in callous disregard of, and in violation of the constitutional rights of the populace of Madison County, its detainees and arrestees, including Steven Hicks." Complaint, Count IV P 20. The proximate result of such acts was that Hicks was housed in a city lockup where he was not sufficiently protected from self-inflicted injuries, resulting in his suicide.

This claim fails because of the immunity bestowed by § 4-103 of the Illinois Tort Immunity Act, which provides:

> Neither a local public entity nor a public employee is liable for failure to provide a jail, detention or correctional facility, or if such facility is provided, for failure to provide sufficient equipment, personnel, supervision or facilities therein. Nothing in this Section requires periodic inspection of prisoners.

745 ILCS 10/4-103. The Illinois courts have held that the immunity afforded by § 4-103 was intended by the Illinois legislature to be absolute. See Jefferson v. Sheahan, 279 Ill. App. 3d 74, 664 N.E.2d 212, 215-17, 215 Ill. Dec. 815 (Ill. App. Ct. 1996) (discussing cases). The mere incantation of the "deliberately indifferent standard," unsupported by factual allegations that would support such a charge, does not change the result. We further note that one Illinois appellate court, reviewing facts quite similar to those before us in this case, held that the city and its police officers were immune under §

4-103 from the plaintiff's claims that their conduct was negligent or willful and wanton. In Fraley v. City of Elgin, 251 Ill. App. 3d 72, 621 N.E.2d 276, 190 Ill. Dec. 407 (Ill. App. Ct. 1993), a pretrial detainee suicide case, the detainee was severely intoxicated and exhibited unusual behavior during his transport to the police station after his arrest. At the station he was placed in "solitary confinement" and was not checked on a regular basis. Sometime later that day, he was found dead in his cell, having hung himself. The court dismissed the complaint's claims that the defendants failed to monitor or to maintain a jail facility in a manner that would safeguard the decedent from self-harm. It noted that there was no showing that the defendants were on notice of any indications of suicide or that they acted with willful and wanton indifference to a lifethreatening incident. As a result, the court concluded that defendants were immunized from claims arising out of the failure to provide sufficient facilities under § 4-103. See id. at 280. Likewise, the County of Madison is immune from liability pursuant to § 4-103 of the Illinois Tort Immunity Act on the allegations set forth in this count. As a local public entity, the County is immune from liability for failing "to provide sufficient . . . supervision or facilities" and for failing to provide "periodic inspection of prisoners." 745 ILCS 10/4-103.

Count VII alleges deliberate indifference on the part of Deputy Papa in releasing Mr. Hicks to the Madison City Police Department. It claims that Deputy Papa was responsible for Mr. Hicks and was vicariously responsible for the conduct of his agents, the City Police Department. Their failure to protect Mr. Hicks from self-harm proximately resulted in his death, and Deputy Papa is vicariously liable, according to the allegations. The Illinois Tort Immunity Act precludes liability on such a basis. See 745 ILCS 10/2-204

(providing that a public employee is "not liable for an injury caused by the act or omission of another person").

The remaining counts, Counts VIII, IX and X, are brought under state law against Sheriff Churchich. All three repeat the allegations that Deputy Papa had a duty to incarcerate Mr. Hicks in the Madison County jail rather than in the Madison City jail and that he negligently and intentionally relinquished Mr. Hicks to the Madison City jail. All three claim that Sheriff Churchich was vicariously responsible for the conduct of Deputy Papa and the City Police Department. All three counts assert that the Sheriff's conduct was done "negligently and with deliberate indifference and in callous disregard of Steven Hicks' rights." P 87. Count VIII further alleges that "Defendant Churchich . . . instituted a policy . . . where he ignored his duties and ordered his deputies and jailors to house state charged misdemeanants in city lockups, if available, as opposed to placing them in the county jail." P 87. Count IX alleges that Sheriff Churchich "failed to require any training of his deputies beyond the minimal training they initially received to become deputies." P 87. Count X alleges that Sheriff Churchich "entrusted the City of Madison with his prisoners' care, including Steven Hicks." P 87.

Many aspects of these counts cannot stand. Indeed, the plaintiffs admit that the allegations of vicarious liability based upon an agency relationship between the County Sheriff and the City of Madison cannot stand. In any event, because Deputy Papa is not held liable for his conduct, the Sheriff cannot be vicariously liable.

One aspect of these counts is, however, of greater concern. Although the Illinois Tort Immunity Act and its case law make clear that a sheriff is immune from liability when he

exercises the discretionary powers of his office, n19 that liability does not extend to willful and wanton acts. The complaint charges that the County Sheriff, Churchich, instituted policies for housing arrestees in the City lockup and, in an exercise of discretion, entrusted prisoners to the care of the City. n20 It also charges that he is liable for failure to train his deputies beyond their initial training. n21 If the complaint simply alleged that Sheriff Churchich is a public official whose position requires the determination of policy or the exercise of discretion, and the act or omission that caused the injury was "both the determination of policy and an exercise of discretion," he would enjoy the immunity provided by the Act. Harinek v. 161 North Clark St. Ltd. Partnership, 181 Ill. 2d 335, 692 N.E.2d 1177, 1181, 230 Ill. Dec. 11 (Ill. 1998). The Illinois Tort Immunity Act provides in pertinent part: A public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused. 720 ILCS 10/2-201. Such immunity has been held to be absolute. Johnson v. Mers, 279 Ill. App. 3d 372, 664 N.E.2d 668, 675, 216 Ill. Dec. 31 (Ill. App. Ct. 1996). However, as we have just noted, the Illinois Tort Immunity Act does not protect the Sheriff from allegations that he acted in a willful and wanton manner. Counts VIII, IX and X also allege in part that the Sheriff knew that conditions in the city jail created a substantial risk of self-harm to Steven Hicks and that the Sheriff nevertheless ordered his Deputy to place the prisoner there.

It may well be that these allegations are without foundation. The record developed in the state court prior to transfer contains evidence that renders these allegations suspect.

Nevertheless, because the state court did not have an opportunity to adjudicate the matter definitively prior to removal and because it appears that the court did not consider the factual development of the record complete, we cannot, at this juncture, rule on the matter. Instead, we must return the case to the district court. That court then must determine anew whether it ought to retain jurisdiction of these surviving state claims or to remand them to state court for further proceedings. In making that decision, the district court ought to examine carefully the state of the record as transmitted upon removal and, in light of the familiarity of the state court with this matter, weigh heavily considerations of judicial economy. Conclusion

For the reasons set forth in the foregoing opinion, we affirm the judgment of the district court with respect to the dismissal of all counts of the complaint except Counts VIII, IX and X. These surviving counts are remanded for further consideration of the particular allegations identified in this opinion as not susceptible to dismissal at this juncture. The district court shall proceed in conformity with this opinion. The parties shall bear their own costs on this appeal.

AFFIRMED in part, REVERSED and REMANDED in part

Footnotes

n1 The plaintiffs allege in their complaint that Mr. Hicks had come from Florida to attend his brother's funeral and just had learned that a niece had died in a car accident; that he was shocked and distressed; that he became excessively drunk after the funeral; and that he went to the motel, where another brother was staying, and lay under a car to commit suicide. The hotel manager happened to discover him halfway

underneath his car and called the sheriff's department. The plaintiffs also allege that "Hicks questioned the value of life, and so indicated by an obvious homemade tattoo on his right arm which stated, 'Is life?'." R.10 P 7.

On March 27, 1997, ruling on the plaintiffs' ninth amended complaint, the district court granted the defendants' motion to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6). It dismissed the plaintiffs' claims against Deputy Papa by concluding that the state court's grant of summary judgment to Deputy Papa should be given res judicata or preclusive effect. n5 The district court then determined that the County of Madison and County Sheriff Churchich were protected by the Tort Immunity Act's absolute immunity provision. n6 It dismissed the plaintiffs' claim with prejudice. On August 11, 1997, the court denied the plaintiffs' Rule 59(e) motion to amend the judgment. This appeal followed.

n2 The pertinent provisions of the Tort Immunity Act are:

> 10/2-201. Determination of policy or exercise of discretion § 2-201. Except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused.
>
> 10/2-202. Execution or enforcement of law § 2-202. A public employee is not liable for his act or omission in the execution or enforcement of any law unless such act or

> omission constitutes willful and wanton conduct.
>
> 10/2-204. Acts or omissions of another person § 2-204. Except as otherwise provided by statute, a public employee, as such and acting within the scope of his employment, is not liable for an injury caused by the act or omission of another person. 745 ILCS 10/2-201, 10/2-202, 10/2-204.

n3 745 ILCS 10/2-109 states: "A local public entity is not liable for an injury resulting from an act or omission of its employee where the employee is not liable."

n4 At the April 23, 1996, hearing, the circuit court denied plaintiffs' motion to reconsider summary judgment in favor of Deputy Papa but granted the motion with respect to Madison County and Sheriff Churchich. It granted plaintiffs leave to file another complaint, but allowed the amended complaint only as to the Sheriff and the County. However, the amended complaint named Deputy Papa in counts I, IV and V.

n5 According to the district court:

> Although this litigation is merely a continuation of the state court litigation rather than a second litigation, the principles of full faith and credit and the rationale behind res judicata are equally applicable. Specifically, all of the elements of res judicata are present: All of the parties are the same, the causes of action are identical and, as far as Papa, there was a final judgment on the merits. When the

> state court entered summary judgment in favor of Papa, the litigation against Papa was effectively ended. Because res judicata applies to all claims that were raised or could have been raised in the earlier litigation, plaintiffs may not maintain any claims against Papa that arose out of the incident in question. R.45 at 5.

n6 745 ILCS 10/4-103 provides: "Neither a local public entity nor a public employee is liable for failure to provide a jail . . . or . . . for failure to provide sufficient . . . supervision . . . therein. Nothing in this Section requires periodic inspection of prisoners." The district court noted that the immunity afforded by § 4- 103 was intended to be absolute. See R.45 at 7 (citing Jefferson v. Sheahan, 279 Ill. App. 3d 74, 664 N.E.2d 212, 215 Ill. Dec. 815 (Ill. App. Ct. 1996)).

n7 We note that the defendants timely filed their notice of removal of the eighth amended complaint within the 30-day period established by 28 U.S.C. § 1446(b). In addition, the record reveals that, after the plaintiffs filed their eighth amended complaint in state court, the defendants did not file documents in state court or otherwise engage in any defensive action that might constitute waiver of removal. See Erwin Chemerinsky, Federal Jurisdiction § 5.5, at 327 (2d ed. 1994). Finally, we note that the plaintiffs did not appeal the state court final summary judgment with respect to Deputy Papa pursuant to Illinois Supreme Court Rule 304(a).

n8 Under the doctrine of law of the case, the general maxim is that, "when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages of the same case." Arizona v. California, 460 U.S. 605, 618, 75 L. Ed. 2d 318, 103 S. Ct. 1382 (1983).

In Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 100 L. Ed. 2d 811, 108 S. Ct. 2166 (1988), the Supreme Court described the doctrine as one that "applies as much to the decisions of a coordinate court in the same case as to a court's own decisions." Id. at 816. It noted that the doctrine "merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their power." Id. at 817 (quoting Messenger v. Anderson, 225 U.S. 436, 444, 56 L. Ed. 1152, 32 S. Ct. 739 (1912) (Holmes, J.)). Nevertheless, it commented, a court "has the power to revisit prior decisions of its own or of a coordinate court in any circumstance, although as a rule courts should be loathe to do so in the absence of extraordinary circumstances such as where the initial decision was 'clearly erroneous and would work a manifest injustice.'" Id. (quoting Arizona, 460 U.S. at 618 n.8); see also Agostini v. Felton, 521 U.S. 203, , 117 S. Ct. 1997, 2017, 138 L. Ed. 2d 391 (1997) (determining that it would not apply the law of the case because adherence to earlier decision would work a "manifest injustice"). Emphasizing the practical policies at the foundation of the doctrine, one "crafted with the course of ordinary litigation in mind," 460 U.S. at 618, the Supreme Court pointed out in Arizona that "a fundamental precept of common-law adjudication is that an issue once determined by a competent court is conclusive." Id. at 619; see also United States v. United States Smelting Ref. & Mining Co., 339 U.S. 186, 198, 94 L. Ed. 750, 70 S. Ct. 537 (1950) (determining that law of the case was not applicable because, on remand, no final decision was made).

n9 Although, under the doctrine of law of the case, we treat decisions on legal issues made at one stage of a case as "'binding precedent to be followed in successive stages of the same litigation,'" see Roboserve, Inc. v. Kato Kagaku Co.,

Ltd., 121 F.3d 1027, 1031 (7th Cir. 1997) (quoting 1B James Wm. Moore et al., Moore's Federal Practice P 0.404(1) (2d ed. 1974)), the doctrine "never blocks a higher court from examining a decision of an inferior tribunal." In re Reliable Drug Stores, Inc., 70 F.3d 948, 951 (7th Cir. 1995).

n10 The Fourth Amendment covers only searches and seizures. As the Supreme Court explained in Brower v. County of Inyo, 489 U.S. 593, 103 L. Ed. 2d 628, 109 S. Ct. 1378 (1989), the "Fourth Amendment addresses 'misuse of power,'" id. at 596 (citation omitted), and a seizure violative of the Fourth Amendment occurs "only when there is a governmental termination of freedom of movement through means intentionally applied," id. at 597. In his incident report, Deputy Papa stated that the computer check revealed that Steven Hicks was wanted on a warrant issued by the City of Madison for failure to appear and disorderly conduct, and that bond was set at $ 2,000. Following the arrest, Deputy Papa transported Mr. Hicks to the City of Madison jail and placed him in the City's custody. The validity of the warrant was confirmed when Deputy Papa arrived at the Madison Police Department with Mr. Hicks. The complaint's only allegations concerning those acts are the Deputy's failure to monitor Mr. Hicks or to recognize the risk that he might harm himself. Therefore, in this case, as in County of Sacramento v. Lewis, 140 L. Ed. 2d 1043, 118 S. Ct. 1708, 1715 (1998), neither a search nor a seizure took place. Indeed, the plaintiffs do not claim there was a search and do not challenge the arrest. See Appellants' Reply Br. at 31-32 ("Plaintiffs are not claiming Hicks' arrest itself was unreasonable. They claim his treatment after arrest was unreasonable."). Mr. Hicks' arrest, made pursuant to a valid warrant, is appropriately analyzed under the Due Process Clause rather than the Fourth Amendment. See Armstrong v. Squadrito, 152 F.3d 564, 569

(7th Cir. 1998) (concluding that the plaintiff's Fourth Amendment claim "drops out of the case" when his arrest is pursuant to a valid warrant because the Fourth Amendment "'governs the period of confinement between arrest without a warrant and the preliminary hearing at which a determination of probable cause is made, while due process regulates the period of confinement after the initial determination of probable cause'") (quoting Villanova v. Abrams, 972 F.2d 792, 797 (7th Cir. 1992)) (emphasis added).

n11 In Farmer v. Brennan, 511 U.S. 825, 128 L. Ed. 2d 811, 114 S. Ct. 1970 (1994), the Supreme Court established that the test for Eighth Amendment liability of a prison official is deliberate indifference to the inmate's health or safety. Liability will lie only if "the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Id. at 837.

n12 The Court developed the distinction between "midlevel fault" and the higher standard of fault: Liability for deliberate indifference to inmate welfare rests upon the luxury enjoyed by prison officials of having time to make unhurried judgments, upon the chance for repeated reflection, largely uncomplicated by the pulls of competing obligations. . . . But when unforeseen circumstances demand an officer's instant judgment, even precipitate recklessness fails to inch close enough to harmful purpose to spark the shock that implicates "the large concerns of the governors and the governed." Just as a purpose to cause harm is needed for Eighth Amendment liability in a riot case, so it ought to be needed for Due Process liability in a pursuit case. Accordingly, we hold that high-speed chases with no intent to harm suspects physically

or to worsen their legal plight do not give rise to liability under the Fourteenth Amendment, redressible by an action under § 1983. County of Sacramento, 118 S. Ct. at 1720 (internal citation omitted).

n13 We need not reach the question whether the allegations of this count set forth a sufficient causal nexus between the alleged constitutional violation (the maintenance of an inadequate county confinement facility) and the injury to Mr. Hicks in the city jail.

Our analysis of the federal claims is limited to the face of the complaint. However, we note in passing that the Madison County Circuit Court held that Deputy Papa was not liable under the Illinois Tort Immunity Act, 745 ILCS 10/2-201, because his conduct was not willful and wanton. The court noted that a defendant's acts are characterized as "willful and wanton" under Illinois law when they are "committed with actual or deliberate intention to harm or with utter indifference or conscious disregard for the safety of others." State R.18 at 2 (citing 745 ILCS 10/1-210; Breck v. Cortez, 141 Ill. App. 3d 351, 490 N.E.2d 88, 94, 95 Ill. Dec. 615 (Ill. App. Ct. 1986)). Although this standard of conduct for state actors, under state law, is not precisely defined as "deliberate indifference," the definitions are remarkably similar. See also Hall v. Ryan, 957 F.2d 402, 405 (7th Cir. 1992) (equating "wilful neglect" with "deliberate indifference"). The record supports both determinations that Deputy Papa's conduct was neither "willful and wanton" nor "deliberately indifferent."

n14 See Antonelli v. Sheahan, 81 F.3d 1422, 1428 (7th Cir. 1995) ("A prison official violates the constitutional rights of a pretrial detainee only when he acts with deliberate indifference.") (citing Salazar v. City of Chicago, 940 F.2d

233, 238 (7th Cir. 1991)); see also Armstrong v. Squadrito, 152 F.3d 564, 577 (7th Cir. 1998) (defining "deliberate indifference," for constitutional claims other than Eighth Amendment claims, as "conscious disregard of known or obvious dangers"); cf. State Bank of St. Charles v. Camic, 712 F.2d 1140, 1147-48 (7th Cir.) (holding that complaint's allegations did not support claim of Fifth or Fourteenth Amendment constitutional deprivation because nothing in the police officers' conduct was intended to culminate in the pretrial detainee's suicide or was shocking to the conscience), cert. denied, 464 U.S. 995, 78 L. Ed. 2d 686, 104 S. Ct. 491 (1983).

n15 Counts V and VI must also be dismissed. Count V, cast in terms of the Fourth Amendment, contains essentially the same factual allegations as Count I. It adds the specific allegation that Deputy Papa had a duty to incarcerate Mr. Hicks in the county facility rather than the city jail. It also claims that Deputy Papa was responsible vicariously for the conduct of the city police department and the city jailor. We have already noted that the plaintiffs' claim is not properly brought under the Fourth Amendment but under the Fourteenth Amendment. In any event, the count contains the same allegations as Counts I and II and therefore does not state a cause of action. The allegations of vicarious liability do not change the situation. Liability under § 1983 must be premised on personal involvement in the deprivation of the constitutional right, not vicarious liability. See Davis v. Zirkelbach, 149 F.3d 614, 619 (7th Cir. 1998); Starzenski v. City of Elkhart, 87 F.3d 872, 880 (7th Cir. 1996), cert. denied, 136 L. Ed. 2d 608, 117 S. Ct. 683 (1997).

Count VI, cast in terms of the Fourteenth Amendment, makes the same allegations as Count V. Because the allegations do

not set forth anything other than negligence and because liability under § 1983 cannot be premised on vicarious liability, this count must also be dismissed.

n16 See Antonelli v. Sheahan, 81 F.3d 1422 (7th Cir. 1995): In order to violate the Eighth Amendment, the condition of confinement must be a denial of "basic human needs" or "the minimal civilized measure of life's necessities." The infliction must be deliberate or otherwise reckless in the criminal sense, which means that the defendant must have committed an act so dangerous that his knowledge of the risk can be inferred or that the defendant actually knew of an impending harm easily preventable. . . . A condition of confinement may be imposed on a pretrial confinee without violating the Due Process Clause if it is reasonably related to a legitimate and nonpunitive governmental goal. It may not be arbitrary or purposeless. Id. at 1427 (citations omitted).

n17 As a threshold matter, we pause to address a preliminary issue that affects several of the supplemental claims. The plaintiffs suggest in their briefs that some of these counts contain or imply constitutional claims. See Appellants' Reply Br. at 5-6. For example, in many counts the plaintiffs allege, in conclusory fashion, that the defendants had "common law, statutory, and constitutional" duties to protect Hicks from harm and to investigate the cause of his excessive intoxication. We believe that any reference to federal causes of action in these counts is far too opaque to permit adjudication and we shall not consider them. See Doherty v. City of Chicago, 75 F.3d 318, 326 (7th Cir. 1996) ("In order to invoke the protection of the Constitution, . . . something more than a conclusory allegation is necessary.").

n18 Plaintiffs contend that a "special duty exception" to the Tort Immunity Act applies to all three defendants. However, the special duty exception to statutory immunity is no longer viable in Illinois. The Supreme Court of Illinois recently has held that "the imposition of the special duty exception to override the legislatively created governmental immunities in the Tort Immunity Act violates the sovereign immunity provisions . . . and also violates the separation of powers clause of the Illinois Constitution." Zimmerman v. Village of Skokie, 183 Ill. 2d 30, 697 N.E.2d 699, 710, 231 Ill. Dec. 914 (Ill. 1998); see also Harinek v. 161 North Clark St. Ltd. Partnership, 181 Ill. 2d 335, 692 N.E.2d 1177, 1183-84, 230 Ill. Dec. 11 (Ill. 1998) (holding that the special duty doctrine may not operate to negate immunities or to impose liability on a public entity found immune). Thus we will consider whether these governmental defendants are immunized from liability under the Tort Immunity Act.

n19 Sheriff Churchich is a county official. See Moy v. County of Cook, 159 Ill. 2d 519, 640 N.E.2d 926, 931, 203 Ill. Dec. 776 (Ill. 1994).

n20 Although plaintiffs suggest in their briefs that they are raising a claim of negligent entrustment, we do not believe that such a doctrine is applicable. "An action for negligent entrustment consists of entrusting a dangerous article to another whom the lender knows, or should know, is likely to use it in a dangerous manner." Johnson v. Mers, 279 Ill. App. 3d 372, 664 N.E.2d 668, 674, 216 Ill. Dec. 31 (Ill. App. Ct. 1996) (citing Zedella v. Gibson, 165 Ill. 2d 181, 650 N.E.2d 1000, 209 Ill. Dec. 27 (Ill. 1995)). We fail to believe that the plaintiffs considered the City lockup a "dangerous article" over which the Sheriff had superior right of control. See id. (holding that police department did not control officer's

service revolver and therefore negligent entrustment claim was not actionable).

n21 We note that the legislature has charged a sheriff with responsibility for the hiring and training of all personnel needed to maintain the jail. See 730 ILCS 125/3; Moy, 640 N.E.2d at 929.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

CHRISTOPHER HICKS et al, Plaintiffs v. Dennis Mize et al, Defendants

Cause No. 96-CV-369-WDS

Filed: 3/27/97

MEMORANDUM ORDER

STIEHL., District Judge:

Before the Court is defendants County of Madison, Illinois, William Papa, and Bob Churchich's motion to dismiss.

BACKGROUND

On August 3, 1991, Deputy Sheriff William Papa, Jr. was dispatched to the Two Brothers Motel in Cottage Hills, Illinois. Upon arriving at the motel, Papa found that an individual was sleeping under the motel owner's car. After getting the individual to his feet, asking him his name, and then running it through the police computer, Papa was able to identify him as Steven M. Hicks. It was revealed that Hicks was wanted on a warrant issued by the City of Madison, Illinois, for failure to appear and for disorderly conduct. As a result, Papa placed Hicks under arrest and transported him to the City of Madison police department in order to confirm the warrant. After transporting Hicks to the City of Madison police department, Papa resumed his normal patrol, Sometime between the hours of 1 :00 a.m. and 4:04 a.m.,

while in the exclusive custody and control of the City of Madison police department, Hicks died by suffocation after hanging himself with a blanket while locked in the City of Maidson's holding cell.

On July 31, 1992, the above captioned plaintiffs commenced suit against the above captioned defendants' in the Circuit Court of the Third Judicial Circuit, Madison County, Illinois. On December21, 1992, a court approved settlement was reached between plaintiffs and defendants Dennis Mize, City of Madison, Illinois, and the City of Madison Board of Fire and Police Commissioners. The state court then dismissed these defendants from the litigation with prejudice, Several years later, on March 17, 1995, Harold Wilson was dismissed from the case. Plaintiffs filed a seventh fn2 amended complaint in state court on May 1, 1995. Subsequently, on June 27, 1995, the remaining defendants, Papa, Churchich, and the County of Madison filed a motion for summary judgment. On January 11, 1996, the state court entered summary judgment in favor of Papa Thus, at that time, the only remaining claims were against Churchich and the County of Madison.

On April 8, 1996, plaintiffs filed their eighth amended complaint in state court This complaint continued to state claims against Papa despite the fact that the state court entered summary judgment in his favor. The complaint also stated claims against Churchich and the County of Madison. .On May 2, 1996, defendants removed the cause to this Court. Subsequently, on May 28, 1996, defendants filed a motion to dismiss plaintiffs' eighth amended complaint, On or about that same day, plaintiffs filed their ninth amended complaint. Finally, on August 7, 1996, defendants filed a motion to dismiss plaintiffs' ninth amended complaint

In their motion to dismiss plaintiffs' ninth amended complaint, defendants advance most of the same theories and arguments contained in their motion to dismiss plaintiffs' eighth amended complaint. Similarly, in their response to defendants' motion to dismiss their ninth amended complaint, plaintiffs rely on many of their same arguments advanced in their response to defendants' motion to dismiss plaintiffs' eighth amended complaint. The Court will rely on the parties pleadings and briefs that concern both the eighth and ninth amended complaints.

ANALYSIS

1. DISMISSAL

To sustain a dismissal of a complaint or a claim under Fed. R. Civ. P 12(b)(6), the Court must take all well-pleaded allegations as true and construe the complaint in the light most favorable to the plaintiff to determine whether he is entitled to relief. Conley v. Gibson, 355 U.S. 41, 45-56 (1957). "The issue is not whether plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." Schener v. Rhodes, 416 U.S. 232, 236 (1974).

2. DEPUTY SHERIFF WILLIAM PAPA RES JUDICATA AND FULL FAITH & CREDIT

As previously noted, the state court entered summary judgment in favor of Papa on the counts which pertained to him. Defendants assert that this judgment is res judicata and, as a result, this Court may not adjudicate the claims against hint Curiously, plaintiffs respond by arguing that summary

judgments are not res judicata. Instead, they assert that summary judgments are interlocutory in nature and are, therefore, capable of being reviewed and reversed by this Court, or another trial court.

The doctrine of res judicata is well settled. Specifically, "the term 'res judicata' is synonymous with the concept of 'claim preclusion,' which refers to 'the preclusive effect of a judgment in foreclosing litigation of matters that were or could have been raised in an earlier suit." Welch v. Johnson, 907 F.2d 714, 719 n.2 (7th Cir. 1990), quoting LaSalle Nat'l Bank of Chicago v. County of DuPage, 856 F.2d 925, 930 n.2 (7th Cir. 1988), quoting Kirk v. Board of Educ., 811 F.2d 347, 351 n.7 (7th Cir. 1987), cert denied, 109 S.Ct. 1536 (1989). Under 28 U.S.C. § 1738, federal courts are required to give state court judgments "the same full faith and credit . . . as they have by law or usage in the courts of such state." Id. "This admonition means that a "state judgment must be given the same res judicata effect in federal court that it would be given in the court of the tendering state." Welch 907 F.2d at 719 (citations omitted).

When determining whether to apply res judicata, the Court looks to

(1) whether the law of the state in which the prior judgment is rendered would give that judgment the preclusive effect against the claims asserted in the federal action; and

(2) whether the party against whom preclusion is asserted had a full and fair opportunity in the state proceedings to litigate the claims (i.e.,

> whether the stale proceedings satisfy the minimum due process requirements).

Id., citing Kremer v. Chemical Constr. Corp., 456 U.S. 461, 476 (1982). In order to determine whether Illinois Courts would give preclusive effect to the summary judgment entered against these plaintiffs, the Court applies the threshold principles identified by the Seventh Circuit:

> (1) Under Illinois law of res judicata, a final judgment on the merits rendered by a court of competent jurisdiction bars the same parties or privies from relitigating matters that were raised in the prior action.
>
> (2) As a general proposition . . . a final judgment on the merits not only settles issues that actually were litigated in the prior action but also issues that might have been litigated in the prior action.
>
> (3) The party asserting the defense of res judicata has the burden of showing with clarity and certainty what was determined by the prior judgment. Any doubt as to what was decided in the earlier action must be resolved against an application of res judicata
>
> (4) The essential elements of res judicata are (1) an identity of the parties or their privies; (2) an identity of causes of action iri the earlier and in the later suit; and (3) a final judgment on the merits in the earlier suit.

Id., at 719-20 citing LaSalle, 856 F.2d at 930 (citations omitted).

Although this litigation is merely a continuation of the state court litigation rather than a second litigation, the principles of full faith and credit and the rationale behind res judicata are equally applicable. Specifically, all of the elements of res judicata are present: all of the parties are the same, the causes of action are identical, and, as far as Papa, there was a final judgment on the merits. When the state court entered summary judgment in favor of Papa, the litigation against Papa was effectively ended. Because res judicata applies to all claims that were raised or could have been raised in the earlier litigation, plaintiffs may not maintain any claims against Papa that arose out of the incident in question.

Plaintiffs counter by asserting that Spiegel v. Continental Ill. Nat'l Bank, 790 F.2d 638 (7th Cir. 1986), stands for the proposition that summary judgment is not a final order and is therefore not res judicata as to subsequent claims. Plaintiff's assertion is incorrect. Specifically, plaintiffs fail to acknowledge the fact that in Spiegel, additional acts occurred after the filing of the first lawsuit. These additional acts gave rise to new causes of action. In this case, as opposed to Spiegel, all of the acts occurred before the filing of the state court action. There were no subsequent actions that took place that could support any new causes of action.

Plaintiff also asserts that 735 ILCS 5/2-10005(c) defines summary judgment as interlocutory. If plaintiffs read the statute closely, they will realize that when a genuine issue as to the amount of damages exists, a court may enter an

interlocutory summary judgment. The statute does not say that all summary judgments are interlocutory. Moreover, because judgment was granted in favor of the defendant, there is no issue concerning the amount of damages. As a result, the state court s grant of summary judgment was clearly a final judgment on the merits as opposed to an interlocutory judgment. Thus, plaintiffs can not maintain any old or new claims against Papa that arose out of the same incident.

3. COUNTY OF MADISON ILLIN OIS AND SHERIFF BOB CHURCHICH IMMUNITY

Next, plaintiffs have advanced several theories of liability against the County of Madison and Sheriff Bob Churchich, These defendants argue that they are protected by the absolute immunity provided by the Illinois Local Government and Governmental Tort Immunity Act, 745 ILCS 10/4-103. Plaintiffs, presenting no argument on the issue, baldly assert that "[i]t is questionable whether qualified immunity applies to an unreasonable seizure or fundamental liberty interest" case such as this case.

Under the Immunity Act.

> Neither a local public entity nor a public employee is liable for failure to provide a jail, detention or correctional facility, or if such facility is provided, for failure to provide sufficient equipment, personnel, supervision or facilities therein. Nothing in this Section requires periodic inspection of prisoners.

The Appellate Court of Illinois recently held that the immunity afforded by § 4-103 is absolute. See Jefferson v. Sheahan 664 N.E.2d 212 (Ill. App. Ct. 1996). Specifically, in Jefferson, the court held that the Illinois legislature, by not providing any exceptions to the plain language of the statute, intended the statute to provide absolute immunity. Id., at 820.

Moreover, in a case factually similar to the case at hand, the Illinois Appellate Court held that § 4-103 immunized the City of Elgin, Illinois and its police officers against the plaintiffs claims that their conduct was either negligent or williful and wanton. See Fraley v. City of Elgin, 621 N.E.2d 276 (Ill. App. Ct. 1993). In Fraley, the decedent was arrested and transported to the City of Elgin police department. On his way to the police department, the decedent behaved unusually and repeatedly banged his head against the walls of the paddy wagon. Upon arriving at the police station, the officers placed the decedent in solitary confinement. Subsequently, the decedent was found dead in his cell, having hung himself. The plaintiff alleged, among other things, that the defendants negligently or willfully and wantonly failed to seek an alternative treatment to detention and to exercise practices and customs relative to intoxicated or self-destructive persons. The court held that absent circumstances that trigger the "special duty exception," the defendants were immune from liability. Id., at 281. Specifically, the court noted that the special duty exception arises in situations "(1) where a plaintiff sues a municipality for the failure to enforce a law or ordinance; or (2) when a plaintiff sues a municipality for injuries negligently caused by police officers or fire fighters while performing their official duties." Id. The court went on to hold that the plaintiff could not offer a set of facts under his complaint that would trigger the special duty exception.

In this case, as in Fraley, the plaintiffs allege that the decedent was severely intoxicated and exhibited unusual behavior. Nevertheless, defendants are shielded from liability under § 4-103. Under plaintiffs complaint, there is no set of facts that would prove that anyone other than Papa (against whom plaintiffs are barred from maintaining any claims that arose out of the incident in question) may have been aware of decedent's suicidal tendencies. Absent circumstances that would trigger a special duty exception, the defendants County of Madison, Illinois and Bob Churchich are immune from liability As a result, the Court FINDS that § 4-103 provides immunity to the County of Madison, Illinois and Bob Churchich,

CONCLUSION

Accordingly, the Court GRANTS defendants' motion to dismiss. Plaintiffs' claims are dismissed with prejudice pursuant to res judicata and absolute immunity as set forth in this Memorandum and Order. Defendants' motion to dismiss plaintiffs' eighth amended complaint and motion to extend time are DENIED as moot.

IT IS SO ORDERED.
DISTRICT JUDGE

Footnotes

fn1 The County of Madison, Illinois and Sheriff Bob Churchich were not named as party defendants in this matter until plaintiffs filed their fourth amended complaint.

fn2 Plaintiffs amended their complaint in state court a total of eight separate times beforet he case was removed to this Court. Since removal, plaintiffs amended their complaint a ninth time and were denied leave to amend their complaint a tenth time.

MARTHA D. PAYNE, as mother for the minor child, CHRISTOPHER M. HICKS, and for ROBERT HICKS and BILLY HICKS, all minor children of the deceased Steven M. Hicks, by and personal representative of the ESTATE OF STEVEN M. HICKS, Plaintiff-Appellant, v. BOB CHURCHICH, WILLIAM PAPA and COUNTY OF MADISON, ILLINOIS, Defendants-Appellees.

No 97-3344

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

January 12, 1999, Decided

NOTICE: DECISION WITHOUT PUBLISHED OPINION

JUDGES: Before Hon. JOEL M. FLAUM, Circuit Judge, Hon. KENNETH F. RIPPLE, Circuit Judge, Hon. DIANE P. WOOD, Circuit Judge.

OPINION: ORDER

Upon consideration of the petition for rehearing with suggestion for rehearing en banc filed by plaintiff-appellant on December 21, 1998, no judge in active service has requested a vote thereon, and the judges on the original panel have voted to deny the petition. Accordingly,

It is ORDERED that the petition for rehearing with suggestion for rehearing en banc is DENIED.

42 U.S.C.A. 1983 Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

725 ILCS 5/107-9. Issuance of arrest warrant upon complaint

107-9. Issuance of arrest warrant upon complaint.
(a) When a complaint is presented to a court charging that an offense has been committed it shall examine upon oath or affirmation the complainant or any witnesses.
(b) The complaint shall be in writing and shall:
(1) State the name of the accused if known, and if not known the accused may be designated by any name or description by which he can be identified with reasonable certainty;
(2) State the offense with which the accused is charged;
(3) State the time and place of the offense as definitely as can be done by the complainant; and

(4) Be subscribed and sworn to by the complainant.

(c) A warrant shall be issued by the court for the arrest of the person complained against if it appears from the contents of the complaint and the examination of the complainant or other witnesses, if any, that the person against whom the complaint was made has committed an offense.

(d) The warrant of arrest shall:

(1) Be in writing;

(2) Specify the name, sex and birth date of the person to be arrested or if his name, sex or birth date is unknown, shall designate such person by any name or description by which he can be identified with reasonable certainty;

(3) Set forth the nature of the offense;

(4) State the date when issued and the municipality or county where issued;

(5) Be signed by the judge of the court with the title of his office; (6) Command that the person against whom the complaint was made be arrested and brought before the court issuing the warrant or if he is absent or unable to act before the nearest or most accessible court in the same county;

(7) Specify the amount of bail; and

(8) Specify any geographical limitation placed on the execution of the warrant, but such limitation shall not be expressed in mileage.

(e) The warrant shall be directed to all peace officers in the State. It shall be executed by the peace officer, or by a private person specially named therein, at any location within the geographic limitation for execution placed on the warrant. If no geographic limitation is placed on the warrant, then it may be executed anywhere in the State.

(f) The warrant may be issued electronically or electromagnetically by use of a facsimile transmission machine and any such warrant shall have the same validity as a written warrant.

725 ILCS 5/107-12. Notice to appear

107-12. Notice to appear.
(a) Whenever a peace officer is authorized to arrest a person without a warrant he may instead issue to such person a notice to appear.
(b) The notice shall:
(1) Be in writing;
(2) State the name of the person and his address, if known;
(3) Set forth the nature of the offense;
(4) Be signed by the officer issuing the notice; and
(5) Request the person to appear before a court at a certain time and place.
(c) Upon failure of the person to appear a summons or warrant of arrest may issue.
(d) In any case in which a person is arrested for a Class C misdemeanor or a petty offense and remanded to the sheriff other than pursuant to a court order, the sheriff may issue such person a notice to appear.

COUNTY JAIL ACT
730 ILCS 125/1. Jail facilities

1. There shall be kept and maintained in good and sufficient condition and repair, one or more jail facilities for the use of each county within this State. However, this requirement may be satisfied by a single jail facility jointly maintained and used by 2 or more counties. It shall be unlawful to build a jail within 200 feet of any building used exclusively for school purposes.

730 ILCS 125/2. Sheriff as warden; custody of prisoners

2. The Sheriff of each county in this State shall be the warden of the jail of the county, and have the custody of all prisoners in the jail, except when otherwise provided in the "County Department of Corrections Act".

730 ILCS 125/4. Receipt and confinement of prisoners

4. The Warden of the jail shall receive and confine in such jail, until discharged by due course of law, all persons committed to such jail by any competent authority. When there is no county jail facility operating in a county, arresting agencies shall be responsible for delivering persons arrested to an adjoining county jail facility, if the adjoining county has entered into a written agreement with the committing county allowing for the maintenance of prisoners in the adjoining county.

730 ILCS 125/5. Costs of maintaining prisoners

5. All costs of maintaining persons committed for violations of Illinois law, shall be the responsibility of the county. All costs of maintaining persons committed under any ordinance or resolution of a unit of local government, including medical costs, is the responsibility of the unit of local government enacting the ordinance or resolution, and arresting the person.

730 ILCS 125/9. Use of jail in another county

9. When there is no jail or other penal institution in a county, or the jail or other penal institution of the county is insufficient, the sheriff may commit any person in his custody, either on civil or criminal process, to the nearest sufficient jail of another county, and the warden of the jail of such county shall receive and confine such prisoner, until removed by order of the court having jurisdiction of the offense, or discharged by due course of law.

730 ILCS 125/12. Notice to county board when jail insufficient

12. Whenever the Warden of the jail of any county deems such jail insufficient to secure the prisoners confined therein, he shall give notice thereof to the county board.

730 ILCS 125/17. Bedding, clothing, fuel, and medical aid; reimbursement for medical or hospital expenses

17. Bedding, clothing, fuel, and medical aid; reimbursement for medical or hospital expenses. The Warden of the jail shall furnish necessary bedding, clothing, fuel and medical aid for all prisoners under his charge, and keep an accurate account of the same. When medical or hospital services are required by any person held in custody, the county, private hospital, physician or any public agency which provides such services shall be entitled to obtain reimbursement from the county or from the Arrestee's Medical Costs Fund to the extent that moneys in the Fund are available for the cost of such services. The county board of a county may adopt an ordinance or

resolution providing for reimbursement for the cost of those services at the Department of Public Aid's rates for medical assistance. To the extent that such person is reasonably able to pay for such care, including reimbursement from any insurance program or from other medical benefit programs available to such person, he or she shall reimburse the county or arresting authority. If such person has already been determined eligible for medical assistance under The Illinois Public Aid Code [FN1] at the time the person is initially detained pending trial, the cost of such services, to the extent such cost exceeds $2,500, shall be reimbursed by the Department of Public Aid under that Code. A reimbursement under any public or private program authorized by this Section shall be paid to the county or arresting authority to the same extent as would have been obtained had the services been rendered in a non-custodial environment. An arresting authority shall be responsible for any incurred medical expenses relating to the arrestee until such time as the arrestee is placed in the custody of the sheriff. However, the arresting authority shall not be so responsible if the arrest was made pursuant to a request by the sheriff. When medical or hospital services are required by any person held in custody, the county or arresting authority shall be entitled to obtain reimbursement from the Arrestee's Medical Costs Fund to the extent moneys are available from the Fund. To the extent that the person is reasonably able to pay for that care, including reimbursement from any insurance program or from other medical benefit programs available to the person, he or she shall reimburse the county. The county shall be entitled to a $10 fee for each conviction or order of supervision for a criminal violation, other than a petty offense or business offense. The fee shall be taxed as costs to be collected from the defendant, if possible, upon conviction or entry of an order of supervision. The fee shall not be considered a part of the fine for purposes of any reduction in the fine.

All such fees collected shall be deposited by the county in a fund to be established and known as the Arrestee's Medical Costs Fund. Moneys in the Fund shall be used solely for reimbursement of costs for medical expenses relating to the arrestee and administration of the Fund. For the purposes of this Section, "arresting authority" means a unit of local government, other than a county, which employs peace officers and whose peace officers have made the arrest of a person. For the purposes of this Section, "medical expenses relating to the arrestee" means only those expenses incurred for medical care or treatment provided to an arrestee on account of an injury suffered by the arrestee during the course of his arrest; the term does not include any expenses incurred for medical care or treatment provided to an arrestee on account of a health condition of the arrestee which existed prior to the time of his arrest.

730 ILCS 125/18. Maintenance of jail

18. The Warden shall keep and maintain the jail in a clean and healthful condition.

730 ILCS 125/19. Personal cleanliness of prisoners

19. The Warden of the jail shall see that strict attention is constantly paid to the personal cleanliness of all prisoners confined in the jail.

730 ILCS 125/22. Grand jury; visitation; report

22. It shall be the duty of the grand jury, or a committee of not less than three of its members, at least once every twelve months, to visit the jail and examine its condition and the treatment of the prisoners, and make report thereof to the court and particularly whether any of the provisions of this Act have been violated or neglected, and the causes of such violation or neglect. In counties where twelve months have passed since the the last grand jury term, the chief judge of the Circuit Court shall appoint a committee of citizens to visit the jail, examine its condition and treatment of prisoners and make a report.

730 ILCS 125/23. Performance of duty of grand jury; enforcement by court

23. The circuit courts of the respective counties shall see that the grand jury or committee of citizens performs the duty imposed upon it by the preceding section, and the report being made, a copy thereof shall be transmitted by the clerk of the court to the county clerk, who shall lay the same before the county board at its next meeting.

50 ILCS 705/1. Legislative declaration

1. It is hereby declared as a matter of legislative determination that in order to promote and protect citizen health, safety and welfare, it is necessary and in the public interest to provide for the creation of the Illinois Law Enforcement Training Standards Board for the purpose of encouraging and aiding municipalities, counties, park districts, State controlled universities, colleges, and public community colleges, and other local governmental agencies of this State and participating

State agencies in their efforts to raise the level of law enforcement by upgrading and maintaining a high level of training and standards for law enforcement executives and officers, county corrections officers, sheriffs, county coroners, and law enforcement support personnel under this Act. It is declared to be the responsibility of the board to ensure the required participation of the pertinent local governmental units in the programs established under this Act, to encourage the voluntary participation of other local governmental units and participating State agencies, to set standards, develop and provide quality training and education, and to aid in the establishment of adequate training facilities.

50 ILCS 705/7. Rules and standards for schools

7. Rules and standards for schools. The Board shall adopt rules and minimum standards for such schools which shall include but not be limited to the following:
a. The curriculum for probationary police officers which shall be offered by all certified schools shall include but not be limited to courses of arrest, search and seizure, civil rights, human relations, criminal law, law of criminal procedure, vehicle and traffic law, traffic control and accident investigation, techniques of obtaining physical evidence, court testimonies, statements, reports, firearms training, first-aid (including cardiopulmonary resuscitation), handling of juvenile offenders, recognition of mental conditions which require immediate assistance and methods to safeguard and provide assistance to a person in need of mental treatment, law of evidence, the hazards of high-speed police vehicle chases with an emphasis on alternatives to the high-speed chase, and physical training. The curriculum shall include specific training in techniques for immediate response to and investigation

of cases of domestic violence and of sexual assault of adults and children. The curriculum for permanent police officers shall include but not be limited to

(1) refresher and in-service training in any of the courses listed above in this subparagraph,

(2) advanced courses in any of the subjects listed above in this subparagraph,

(3) training for supervisory personnel, and

(4) specialized training in subjects and fields to be selected by the board.

b. Minimum courses of study, attendance requirements and equipment requirements.

c. Minimum requirements for instructors.

d. Minimum basic training requirements, which a probationary police officer must satisfactorily complete before being eligible for permanent employment as a local law enforcement officer for a participating local governmental agency. Those requirements shall include training in first aid (including cardiopulmonary resuscitation).

e. Minimum basic training requirements, which a probationary county corrections officer must satisfactorily complete before being eligible for permanent employment as a county corrections officer for a participating local governmental agency.

f. Minimum basic training requirements which a probationary court security officer must satisfactorily complete before being eligible for permanent employment as a court security officer for a participating local governmental agency. The Board shall establish those training requirements which it considers appropriate for court security officers and shall certify schools to conduct that training. A person hired to serve as a court security officer must obtain from the Board a certificate

(i) attesting to his or her successful completion of the training course;

(ii) attesting to his or her satisfactory completion of a training program of similar content and number of hours that has been found acceptable by the Board under the provisions of this Act; or

(iii) attesting to the Board's determination that the training course is unnecessary because of the person's extensive prior law enforcement experience.

Individuals who currently serve as court security officers shall be deemed qualified to continue to serve in that capacity so long as they are certified as provided by this Act within 24 months of the effective date of this amendatory Act of 1996. Failure to be so certified, absent a waiver from the Board, shall cause the officer to forfeit his or her position.

All individuals hired as court security officers on or after the effective date of this amendatory Act of 1996 shall be certified within 12 months of the date of their hire, unless a waiver has been obtained by the Board, or they shall forfeit their positions.

The Sheriff's Merit Commission, if one exists, or the Sheriff's Office if there is no Sheriff's Merit Commission, shall maintain a list of all individuals who have filed applications to become court security officers and who meet the eligibility requirements established under this Act. Either the Sheriff's Merit Commission, or the Sheriff's Office if no Sheriff's Merit Commission exists, shall establish a schedule of reasonable intervals for verification of the applicants' qualifications under this Act and as established by the Board.

ILLINOIS
MUNICIPAL JAIL AND LOCKUP
STANDARDS

EFFECTIVE October 1, 1988

DEPARTMENT OF CORRECTIONS
Executive Building
P.0. box 19277
1301 Concordia Court
Springfield, Illinois 62794-9277

BUREAU OF INSPECTIONS AND AUDITS
Detention Standards and Services Unit
P.0. box 19277
1403 House - Second floor
1301 Concordia Court
Springfield, Illinois 62794-9277

FOREWORD

This manual contains standards and procedures for the operation of municipal jails and lockups and supersedes the Municipal Jail and Lockup Standards dated July, 1980. These standards provide a guide to municipal authorities which will promote the security of the community, improve safety for staff and confined persons, encourage efficient Management and upgrade the general condition of jail and Jail operations throughout Illinois.

Jail and lockups are a part of the criminal justice system. Often, offenders receive their first confinement experience in such a faculty and the type of care and treatment they receive has a strong influence on their subsequent attitudes and adjustments. Human custodial care and treatment is, therefore, required.

Establishing standards is not an arbitrary procedure. Statutes, court decisions, and sound management principles are fundamental guides. The minimum standards contained herein, which must be met, reflect those guides When court opinions in the various jurisdictions contradict these standards, the court opinion supersedes and will prevail.

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AUTHORITY: Implementing and authorized by Section 3-15of the Unified Code of Corrections (111. Rev. Stat. 1987 Supp., ch. 38, par. 1003-15-2).

SOURCE: Amended November 4,1977 Rule at 3 111. Reg. 8, p.1, effective February 14, 1979, for maximum of 150 days; amended at 4 111. Reg. 28, p.311, effective July 1, 1980; codified at 8 111. Reg. 14415;

NOTE: All capital letters indicate statutory language.

ILLINOIS MUNICIPAL JAIL AND LOCKUP STANDARDS

CROSS REFERENCE TABLE

PREFACE: The Municipal Jail and Lockup Standards were codified as required by the Illinois Administration Procedure Act (111. Rev. Stat., ch. 127, Pars.1001 et seq.) and the Rulemaking rules (1 111. Adm. Code 100) promulgated by the Secretary of State. The Codified rules are labeled in Sections rather than Chapters as the previous standards were. The following table is provided to assist you in making the transition to the codified rules.

Previous Standard Number	Standard Title	Current Standard Number
	Definition	
Ch. I	Legal Authority to set Up Standards and Exercise Supervision Over Jails and Lockup	720.5
Ch. II	Legal Rights of Accused While In Custody	720.2
Ch. III	Use of Jails/Lockup	720.3
Ch. IV	Minimum Physical Standards--Existing Buildings	720.4
Ch. V	Minimum Cell and Detention Room Standards--Existing Facilities	720.5
Ch. VI	Supervision	720.6
Ch. VII	Security	720.7
Ch. VIII	Food	720.8
Ch. IX	Sanitation	720.9
Ch. X	Fire Protection	720.1
Ch. XI	Emergency Plan	720.1
Ch. XII	Detainee Records	720.11
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Ch. XIV	Use of Force	720.14
Ch. XV	Juvenile Detention	720.15
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ILLINOIS MUNICIPAL JAIL AND LOCKUP STANDARDS

Section 720.5 Definitions

"Department" means the Illinois Department of Corrections.

"Detention Standards and Services Unit" means the unit within the Bureau of Inspections and Audits of the Department of Corrections which is authorized to monitor compliance with Municipal Jail and Lockup Standards.

!Unit!! means the Detention Standards and Services Unit.

(Source: Added at 12 Ill. Reg. 12452, effective October 1, 1988)

ILLINOIS MUNICIPAL AND LOCKUP STANDARDS
720.20

Section 720.10 Legal Authority to Set, up Standards and Exercise Supervision aver Jails end Lockups

Standards and Assistance to Local Jails and Detention and Shelter Care Facilities, Section 3-15-2 of the Unified Code of Corrections (Ill. Rev. Sta.. 1951 Supp., ch. 38, par. 1003-15-2):

a) THE DEPARTMENT SHALL ESTABLISH FOR THE OPERATION OF COUNTY AND MUNICIPAL JAILS AND HOUSES OF CORRECTION, AND COUNTY JUVENILE DETENTION AND SHELTER CARE FACILITIES ESTABLISHED PURSUANT TO THE "COUNTY SHELTER CARE AND DETENTION HOME ACT", MINIMUM STANDARDS FOR THE PHYSICAL

CONDITION OF SUCH INSTITUTIONS AND FOR THE TREATMENT OF INMATES WITH RESPECT TO THEIR HEALTH AND SAFETY AND THE SECURITY OF 'VHS COMMUNITY AND TO MAKE RECOMMENDATIONS TO SUCH INSTITUTIONS TO ASSURE COMPLIANCE WITH THE REQUIREMENTS OF SUCH MINIMUM STANDARDS.

b) AT LEAST ONCE EACH YEAR, THE- DEPARTMENT SHALL INSPECT EACH SUCH FACILITY FOR COMPLIANCE WITH THE STANDARDS ESTABLISHED AND THE RESULTS OF SUCH INSPECTION SHALL BE MADE AVAILABLE BY THE DEPARTMENT FOR PUBLIC INSPECTION.

1) IF ANY DETENTION, SHELTER CARE OR CORRECTIONAL FACILITY DOES NOT COMPLY WITH THE STANDARDS ESTABLISHED, THE DIRECTOR OF CORRECTIONS SHALL GIVE NOTICE TO THE COUNTY BOARD AND THE SHERIFF FOR THE CORPORATE AUTHORITIES OF THE MUNICIPALITY, AS THE CASE MAY BE, OF SUCH NONCOMPLIANCE, SPECIFYING THE PARTICULAR STANDARDS THAT HAVE NOT BEEN MET BY SUCH FACILITY.

2) IF THE FACILITY IS NOT IN COMPLIANCE WITH SUCH STANDARDS WHEN SIX MONTHS HAVE ELAPSED FROM THE GIVING OF SUCH NOTICE, THE DIRECTOR OF CORRECTIONS MAY PETITION THE APPROPRIATE COURT FOR AN ORDER REQUIRING SUCH FACILITY TO COMPLY WITH THE STANDARDS ESTABLISHED BY THE DEPARTMENT OR FOR OTHER APPROPRIATE RELIEF.

c) THE DEPARTMENT SHALL PROVIDE CONSULTATION SERVICES FOR THE DESIGN, CONSTRUCTION, PROGRAMS AND ADMINISTRATION OF DETENTION, SHELTER CARE,

AND CORRECTIONAL FACILITIES AND SERVICES FOR CHILDREN AND ADULTS OPERATED BY COUNTIES AND MUNICIPALITIES AND SHALL MAKE STUDIES AND SURVEYS OF THE PROGRAMS AND THE ADMINISTRATION OF SUCH FACILITIES. PERSONNEL OF THE DEPARTMENT SHALL BE ADMITTED TO THESE FACILITIES AS REQUIRED FOR SUCH PURPOSES. THE DEPARTMENT MAY DEVELOP AND ADMINISTER PROGRAMS OF GRANTS-IN-AID FOR

ILLINOIS MUNICIPAL JAIL AND LOCKUP STANDARDS
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CORRECTIONAL SERVICES IN COOPERATION WITH LEGAL AGENCIES. THE DEPARTMENT SHALL PROVIDE COURSES OF TRAINING FOR THE PERSONNEL OF SUCH INSTITUTIONS AND CONDUCT PILOT PROTECTS IN THE INSTITUTIONS.

(Source: Amended at 12 111. Reg. 12452, effective October 1, 1988)

ILLINOIS MUNICIPAL JAIL AND LOCKUP STANDARDS 720.20

Section 720.20 Legal Rights of Accused While in Custody

Sections 103-2, 103-3, 103-4, 103-7 and 103-8 of the Code of Criminal Procedure of 1963 Rev. Sta.. 1985, oh. 38, pars. 103-2, 103-3, 103-4, 103-7 and 103-8).

a) TREATMENT WHILE IN CUSTODY

1) ON BEING TAKEN INTO CUSTODY EVERY PERSON SHALL HAVE THE RIGHT TO REMAIN SILENT.

2) NO UNLAWFUL MEANS OF ANY KIND SHALL BE USED TO OBTAIN A STATEMENT, ADMISSION OR CONFESSION FROM ANY PERSON IN CUSTODY.

3) PERSONS IN CUSTODY SHALL BE TREATED HUMANELY AND PROVIDED WITH PROPER FOOD, SHELTER, AND, IF REQUIRED, MEDICAL TREATMENT.

b) RIGHT TO COMMUNICATE WITH ATTORNEY AND FAMILY--TRANSFERS

1) PERSONS WHO ARE ARRESTED SHALL HAVE THE RIGHT TO COMMUNICATE WITH AN ATTORNEY OF THEIR CHOICE AND A MEMBER OF THEIR FAMILY BY MAKING A REASONABLE NUMBER OF TELEPHONE CALLS OR IN ANY OTHER REASONABLE MANNER. SUCH COMMUNICATION SHALL BE PERMITTED WITHIN A REASONABLE TIME (within the first hour) AFTER ARRIVAL AT THE FIRST PLACE OF CUSTODY.

2) IN THE EVENT THE ACCUSED IS TRANSFERRED TO A NEW PLACE OF CUSTODY, HIS RIGHT TO COMMUNICATE WITH AN ATTORNEY AND A MEMBER OF HIS FAMILY IS RENEWED.

c) RIGHT TO CONSULT WITH ATTORNEY

1) ANY PERSON COMMITTED, IMPRISONED OR RESTRAINED OF HIS LIBERTY FOR ANY CAUSE WHATEVER AND WHETHER OR NOT SUCH PERSON IS CHARGED WITH AN OFFENSE SHALL, EXCEPT IN CASES OF IMMINENT DANGER OF ESCAPE, BE ALLOWED TO CONSULT WITH ANY LICENSED ATTORNEY AT LAW OF THIS STATE WHOM SUCH PERSON MAY DESIRE TO SEE OR CONSULT, ALONE AND IN PRIVATE AT THE PLACE OF CUSTODY, AS MANY TIMES AND FOR SUCH PERIOD EACH TIME AS IS REASONABLE.

2) WHEN ANY SUCH PERSON IS ABOUT TO BE MOVED BEYOND THE LIMITS OF THE STATE UNDER ANY PRETENSE WHATEVER, THE PERSON TO BE MOVED SHALL BE ENTITLED TO A REASONABLE DELAY FOR THE PURPOSE OF OBTAINING COUNSEL AND OF AVAILING HIMSELF OF THE

ILLINOIS MUNICIPAL JAIL AND LOCKUP STANDARDS
720.30

Section 720.30 Use of Jails/Lockups

a) The jail/lockup, hereinafter referred to as a jail, is a security faculty operated by the police department, for the temporary detention of persons held for investigation pending disposition of their cases by the judiciary or awaiting transfer to another institution.

b) The maximum period of detention in a jail should not normally exceed 48 hours, except when detention occurs at the beginning of a weekend or holiday.

c) NO MINOR UNDER 16 YEARS OF AGE MAY BE CONFINED IN A JAIL OR PLACE ORDINARILY USED FOR THE CONFINEMENT OF PRISONERS IN A POLICE STATION. MINORS UNDER 11 YEARS OF AGE MUST BE KEPT SEPARATE FROM CONFINED ADULTS AND MAY NOT AT ANY TIME BE KEPT IN THE SAME CELL, ROOM, OR YARD WITH ADULTS CONFINED *PURSUANT* TO THE CRIMINAL LAW. (Section 3-6(5) of the Juvenile Court Act (Ill. Rev. Sta. ch. 37, par. 703-6(5).)

d) A detainees with a known history of mental disorder or mental defect, or who shows evidence of such condition, shall be detained only temporarily in a municipal jail and transferred as soon as possible. In the event such a detainees Is received, he shall be afforded protective Custody and constant supervision until transferred. The Chief of Police or the Chief Jailer shall Immediately notify the appropriate authorities regarding the mental condition of the detainees so that a transfer can be effected.

(Source: Amended at 12 Ill. Reg. 12452, effective October 1, 1988)

ILLINOIS MUNICIPAL JAIL AND LOCKUP STANDARDS 720.60

Section 720.60 Supervision

a) There must be sufficient *officers present in* the jail, awake and alert at all times, to provide supervision while persons are confined. For most municipalities, a radio operator an duty will suffice, provided duties do not interfere with the

conduct of the following supervisory checks required in the following paragraph (refer to Section 720.70(d)).

I) A visual check by personal inspection of each person confined shall be conducted, not including observation by a monitoring device, at least once every 60 minutes, unless continuous audio and visual checks conducted with a monitoring device has been approved as a variance in accordance with Section 720.50(1).

2) Visual checks shall be recorded by a mechanical device or logged in ink indicating:

A) Time of check.

B) Signature of responsible person.

C) Any relevant remarks.

b) Under the following conditions, supervision shall be provided by a person of the same sex:

1) When procedures require physical contact or examination, such as body searches

2) During periods of personal hygiene activities such as showers, toiling, and related activities. (This standard does not prohibit the use of necessary force by a staff member of a sex other than that of a detainees.)

c) Persons confined beyond 48 hours shall be permitted to shower or bathe.

d) Any seriously injured, seriously ill or unconscious person must not be admitted to the jail until a medical examination has been conducted by a physician.

1) A physician shall have authority to order a detainees removal to a hospital.

2) A written record of all physicians' visits, examinations, and treatment shall be maintained.

3) Medication administered to detainees shall be recorded in a log.

ILLINOIS MUNICIPAL JAIL AND LOCKUP STANDARDS 720 60

e) Receipts must be issued for all personal property taken from a detainees.

(Source: Amended at 12 Ill. Reg. 12452, effective October 1, 1988)

20 ILLINOIS ADMINISTRATIVE CODE Ch. I, Sec.701 ,S
SUBCHAPTER E

TITLE 20: CORRECTIONS, CRIMINAL JUSTICE, AND LAW ENFORCEMENT

CHAPTER I: DEPARTMENT OF CORRECTIONS

SUBCHAPTER E: COUNTY STANDARDS

PART 701

COUNTY JAIL STANDARDS

Section

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701.270	Junvenile Detention

AUTHORITY: Implementing and authorizing by section 3-15-2 of the Unified Code of Corrections (III. Rev. Stat. 1989, Ch. 18, par. 1000-15-2).

SOURCE: Emergency rule adopted November 7, 1974; at 4 III. Reg. 28, p. 186, Effectively July 1, 1980: codified at 8 III. Reg. 16739, effective November 1, 1989; amended at 14 III Reg. 20392, effective January 1, 1991; amended at 15 III. Reg. 20392, effective January 1, 1991; amended at 15 III. Reg. 16789, Effective October 1, 1991

Section 701.5 Definitions

"Department" means the Illinois Department of Corrections.

"Detention Standards and Services Unit" means the unit within the Bureau of Inspections and Audits of the Department of Corrections which is authorized to monitor compliance with the County Standards.

“Unit” means the Detention Standards and Services Unit.

(Source: Added at 12 Ill, Reg. 12274, effective October 1, 1988

Section 701.10 Administration, Minimum Standards

a)Staff Training
All full-time jail officers shall be trained as provided by the Police Training Act (Ill. Rev. Stat. - 1985 ch. par. 508.1). All personnel assigned jail duties shall be made familiar with these standards. Such training shall include identification management of sions and management of mentally ill detainees.

b)Written procedures
A current written manual of policies and regulations for the operation of the jail shall be published and written emergency procedures in the event of fires, riots, escapes, bomb threats, and natural disasters shall be a part of this manual.

c) Post Description
Comprehensive duty descriptions shall be in writing and furnished to each employee performing the function.

d)Records
The sheriff or jail administrator shall assure that all required records are maintained and available for examination

(Source: Amended at 12 Ill, Reg 12274, effective October 1, 1988 Section 701.20 Personnel

a)Introduction
Rapid change characterizes modern society. Like most public institutions, the county jail, too, is changing. The emphasis is now on the role of the county jail in a corrections program. Today's jail officer is more than a mere keeper of keys and bodies. Officers must operate a small community whose

inhabitants lack freedom of mobility, yet retain many citizens rights. As new and expanded program responsibilities are added to protective services, jail personnel must develop new skills and become proficient in applying them. When staff are given increased responsibility and proper recognition, job performance and job satisfaction improves.

b)Minimum Standards

1) Jail Officer Staffing

Each jail must have sufficient personnel to provide adequate twenty—four hour supervision of detainees.

A) a jail administrator, qualified by training and experience to supervise staff and detainees, shall be appointed when the average daily jail population exceeds 25.

B) No person shall be confined without an officer on continuous duty in the jail, awake and alert at all times.

C) If the facility has more than one floor of detention, one jail officer shall be required for each additional floor when 15 or more detainees are confined. This minimum standard does not apply to the midnight shift if the required 30—minute supervisory checks can be performed.

D)Under the following conditions, supervision shall be provided by a person of the same sex:

i)When procedures require physical contact or examination, such as strip searches.

ii) During periods of personal. hygiene activities and care such as showers, toileting, and related activities.

AGENCY NOTE: This standard does not prohibit the use of necessary force by a staff member of a sex other than that of a detainee.

2)Personnel Rules

Each staff member working in direct contact with detainees shall have a knowledge of rules and regulations

A)Jail officers shall be thoroughly acquainted with all security features of the jail and the location and use of all emergency equipment and first aid supplies

B)No jail officer shall recommend or furnish any advice concerning the retention of a specific lawyer: however a list of lawyers shall be made available by the administration if a detainee is not acquainted with a local attorney.

Source Amended at 12 III. Reg. 12274. effective October 1, 1988)

Section 701.30 Records

a) Introduction

An accurate records system is of utmost importance. Factual information concerning prisoners and circumstances of their incarceration is necessary to plan programs, effectively control prisoners, meet statutory requirements, and supply regulatory agencies with information and statistics. A sound records and report system provides the jail administrator with an effective management tool.

b) Minimum Standards

1) Booking and Personal Record Information
A booking and personal record file shall be maintained (Section 701.40(b)(12).)

2) Monthly Reports, Statistics

A) Each jail warden shall monthly, submit to the Department of Corrections an accurate report of the number of persons confined during the preceding month and provide information on each of the several categories indicated on the report form provided by the Department.

B)Duplicate copies *of* the report shall be prepared. The reporting facility shall maintain the original and forward the duplicate to the Department by the tenth day of the following month.

3)Extraordinary or Unusual Occurrence

All unusual incidents which involve or endanger the lives or physical welfare of jail officers or detainees must be reported to the Detention Standards and Services Unit by the sheriff or his designee utilizing the form supplied by the Unit.

A) Reports shall be forwarded within 72 hours of the occurrence .

.

B) Extraordinary or unusual occurrences shall mean:

i) Death. regardless ot cause,
ii)Attempted suicide (if hospitalization or medical treatment is required).
iii)Serious injury, to include accidental or self inflicted .
iv)Escape from confinement.
v) Attempted escape.
vi)Fire.
vii)Riot.
viii) Battery on a staff member.
ix) battery on detainees by a staff member.
x)Battery on detainee by another detainee (only hospitalization ion or extensive medical treatment is required) .

xi)Sexual assaults.
xii)Occurrence of contagious or infectious disease or illness within the facility.

(Source: Amended at 12 Ill Reg. 12274, effective October 1, 1988)

Section 701.40 Admission procedures

a) Introduction
1) Good Jail operation begins the instant a detainee in lawful custody enters the jail. A thoroughly planned and well organized admission process is an indispensable prerequisite to good jail management,

2)With confinement the individual partially forfeits free status for one of a dependent detainee, if, in undergoing a first jail experience, a person observes thorough, objective, decent, orderly, and respectful methods by the admitting staff member, his reaction to other jail personnel is more likely to be with respect and confidence. On the other hand, admission methods that are careless and antagonistic will cause distrust and antagonism toward other jail staff. Admission procedures set the tone for detainee adjustment,
b) Minimum Standards

1) Posting of Rights
A Notice of Rights, available from the Detention Standards and Services Unit, and jail rules and regulations shall be conspicuously posted in all receiving rooms and in common areas to provide maximum accessibility to detainees.

2)Search
Detainees shall be given an immediate frisk search.

3)Legal confinement Authority

The jail officer accepting persons for confinement must determine that each is being confined under proper legal authority.

4) Identity
A) Identity of the person- being admitted must be verified as the person named in the commitment documents, Documents must become a part of the detainee's record.

B)Each detainee must be photographed and fingerprinted and these records shall be maintained in accordance with law (see Ill. Rev. Stat. 1985, ch. 27, par. 702 and ch. 38, par. 706—5) .

5) Injuries
Any seriously injured, seriously ill or unconscious person must not be admitted *to* the jail until a medical examination has been conducted by a licensed physician except when a properly staffed medical facility is a part of the jail.

6) Strip Search
A strip search shall be performed to ensure against the introduction of weapons, contraband, and body pests.

A) The strip search shall be performed in an area that ensures privacy and dignity of the individual. The individual shall not be exposed to the view or others not specifically involved in the process.

B)Searches shall be conducted by a person of the same sex

C)All personal clothing shall be carefully searched for contraband.

D) The probing of body cavities may not be done except where there is reasonable suspicion to believe that the detainee is carrying contraband there, and such searches may only be conducted by medically trained persons other than an inmate, e.g., physician, physician assistant, registered

nurse, licensed practical nurse, or paramedic in a private location and under sanitary conditions.

7) Personal Property, Accountability
Each personal property item taken from the detainee shall:

A)Be listed and described in the presence of the detainee and a receipt shall be issued.

B)The receipt must show the signatures of the admitting officer and the detainee, with the original filed in the detainee's personal record file and the duplicate given to the detainee.

8)Personal Property, Security

A)All personal property of the detainee shall be safely stored until such time as release-discharge or unless the detainee approves, in writing, such property to a designated person.

B)Personal property released to a third party must have the detainee's signature of approval and a signature of receipt of the third party.

9)Telephone Calls
Detained persons shall be permitted a reasonable number of local and/or long distance Completed telephone calls to an attorney off their choice and to a family member as soon as practicable, generally within one hour after arrival. The expense for the making of a telephone call, if any, shall be borne by the detainee.

A) When no family member-can be contacted, a friend may be substituted.

B) The date and time of initial telephone calls shall be recorded .

10)Medical Examination

A) The admitting officer shall observe the detainee for any obvious injuries or illnesses requiring immediate emergency medical care, rashes, unusual cough, high temperature, body pests, and general mental status. The officer shall determine by questioning if the detainee has medical conditions such as dependence on drugs or alcohol, diabetes, epilepsy, past treatment for mental disorders, allergies; if the detainee is on medication and if the detainee is a female, whether she is pregnant.

B) When a detainee shows signs of or reports unusual physical or mental distress, he shall be referred to health care personnel as soon as possible.

11) Medication
Any medication in the possession of a detainee be withheld until verification of its proper use is obtained. This verificartion shall be made as soon as possible, but within the time interval specified for administration
on the prescription container.

12) Booking and Personal Record Information
A record or records for each detainee shall be established at admission and maintained throughout the period of confinement.

Such record shall include:
A) Name and social security number,

B)AKA and nicknames.

C)Address.

D)Marital status.

E)Age and date of birth.

F)Person to notify in case of emergency, including the address and telephone number.

G) physical description and characteristic marks

H)Occupation.

I)Education level attained.

J)Religion or religious affiliation

K)Offense, (charged with or sentenced for).

L)Date and time off admission and authority.

M)Name and title of officers presenting and receiving detainee.

N) Name and telephone number of detainee's attorney,

O)Previous arrest record and convictions,

P)Medical record ofhealth and physical condition at admission; during confinement, including treatment and medication administered; condition at discharge: and medical and/or hospitalization insurance carrier and policy numbers,

Q) Itemized record of detainee's cash and other valuables, expenditures, and receipts while in custody.

R) Dates of temporary absences from jail, authority to be absent, and destination.

S)Record of visitor's names and dates of visits.

T)Record of misconduct and discipline administered.

U)Case disposition, judge, and court.

13)Lice and Other Body Pests
Treatment, directed by the facility physician, shall be initiated immediately when body pests are detected.

14)Showers
All detainees must shower or bathe when admitted.

15)Cell Assignment

A)The detainee shall be assigned to suitable quarters.

B)Jail staff shall be responsible for cell assignment and shall consider the status of new detainees (for example, pre or post—trial detention, etc.) , sex, health. age, type of offense charged, prior record if known, and whether there are any accomplices or material witnesses already within the jail from whom the person should be separated.

16)Items of Issue
Detainees shall be issued clean bedding, towel, necessary clothing, and soap,

A)Bedding shall consist of at least a mattress cover, flame retardant mattress, and blanket(s) appropriate to the season of the year.

B)The towel shall be cloth and of bath size

C)Detainees shall be permitted to purchase a toothbrush and dentifrice from the commissary, unless furnished by the jail staff. It the detainee is without funds in his possession, he shall be issued such items by jail staff.

D)Detainees shall he held accountable for all jail property issued to them.

(Source: Amended at 12 Ill. Reg. 12274, effective October 1, 1988)

Section 701.50 Orientation

a)Introduction

1) Arrest and confinement are stress—producing and often result in unpredictable behavior. For the person undergoing confinement for the first time, the initial impact can determine reaction to the total experience. To those who have been confined before, previously formed impressions may be reinforced and reaction to the present situation predetermined. To counter negative reactions, a clear and concise orientation procedure by qualified staff is required.

2)A detainee must learn to adjust to confinement and have the benefit of guidelines and correctly interpreted information. Otherwise he is subject to misinformation from other detainees. Hew must learning rules in relation to schedules, visiting, cleanliness, freedom of movement, and approved activities

b)Minimum Standards—-Orientation Content
The orientation shall include

1)Information pertaining to rising and retiring, meals, mail procedures, work assignments, telephone privileges, visiting, correspondence, commissary, medical care, etc

2)Rules of conduct .

3)Disciplinary procedures.

4)Information regarding programs, i.e., work, education and vocational training, counseling and all social services.

5)Procedures for making requests or entering complaints to the jail staff, judiciary or to Department of Corrections personnel.

6) Special assistance shall be given to illiterate and non-English speaking detainees.

(Source: Amended at 4 Ill. Reg. 29, p. 186, effective July 1, 1980)

Section 701.7 Classification, Separation, Segregation

a) Introduction

1) Minimum segregation is required by law. Jail administrators are responsible for the safekeeping of many different types of persons in a wide range of categories, (i.e., legal, mental, and physical, and separating them for administrative purposes).

2) A good classification program is contingent upon obtaining essential information on which to base an appraisal which will help reduce many security problems and provides safety for staff and detainees. Proper decisions avoid the often dangerous consequence of indiscriminate housing. Classification can be uncomplicated or it can be a very complex process depending upon the size of the jail, physical facilities, and staff. Four fundamental conditions must be met:

A)Security of the jail;

B)Safety and welfare of the detainees;

C) Protection of the staff and community; and

D)Effective use of the jail to fulfill its potential as an instrument of correction and behavior modification for those confined.

b)Minimum Standards

1)classification Information .

Each facility shall have a Classification plan that specifies criteria and procedures for determining and changing the status of an inmate. To determine each detainees degree of security, housing and programs, the following items of information, to the extent available, shall be considered among other matters:

A)Sex

B)Age

C)Offense

D)Pretrial

E)Past criminal history, including known prior institutional history.

F) Probation/parole status.

G)Medical condition and treatment needs

H) Mental/emotional condition and needs

I)Mental health problems

J)Homosexuality

K)Academic and vocational needs

L) Special services and programs needs.

M)Detainee's attitudes regarding himself and his future

N)Gang activity

2) Separation by Category

A)Separation by Sex

B)Witnesses
Persons being detained as witnesses shall be separated from detainees charged with an offense.

C) Non-Criminal
Non-criminal offenders such as traffic violators, nonsupport cases, and persons charged with civil contempt shall be kept separated from persons charged with criminal offenses.
AGENCY NOTE: Separate housing is strongly recommended for misdemeanants and felons, except where the prior history subsection (b)(1)(e)) warrants similar housing.

D)Sentenced Offender
Sentenced offenders shall be segregated from unsentenced offenders

E) Homosexuals
Known homosexuals shall be housed separately.

F)Mentally or Emotionally Disturbed or Retarded

i)The mentally or emotionally disturbed or retarded shall be housed or segregated separately and maintained under constant supervision.

ii) Suspected disturbed or retarded persons shall be immediately examined by a physician, or other competent person, and action taken to transfer them to an appropriate facility.

3) Direct Supervision Option
Where jail design and policies and procedures of jail management meet the requirement of direct staff supervision of inmates within housing areas, classification and prisoner housing assignments may alternatively be based upon prisoner behavior, rather than mandatory separation by classification category, with the following stipulations:

A) Jail staffing must provide a correctional officer within each housing area on a twenty—four hour basis, This correctional officer shall be in direct visual and oral contact with prisoners, without separation by security walls or other barriers.

B) Exercise of this option does not waive the requirements of subsection (b)(1) which require a classification plan taking into account its designated considerations

C)Exercise of this option does not waive any requirements of subsection (b) (1) Separation by Category, except the requirements of subsection (b)(2), Separation by Category except the requirements of subsection (C).

4)Classification Review

Review of the committed persons classification shall be conducted periodically, but at least every 60 days.

(Source: Amended at 14 Ill. Reg. 20392, effective January 1, 1991)

C) Subsections (b)(3)(A), (C) and. (D), (b)(6)(F) and (b)(8)(B) of this Section may be waived for those facilities exercising the Direct Supervision Option, as described in Section 701.70(b)(4); provided that alternatives would not affect the safety and security of the facility or individuals.

(Source: Amended at 12 Ill. Reg. 12274, effective October 1, 1988)

Section 701.90 Medical and Health Care
a)Introduction

1) For more than half a century, courts have held it a jailers duty to exercise reasonable and ordinary care to protect a detainee's life and health. More recently, courts in several sates have ordered direct and substantial medical services to be provided persons in jail confinement.

2)Health services should reflect the desire of the community to provide health care equivalent to that accorded its citizens in the free community. The detainee must be shown concern and interest in his physical and mental well being. Confinement, for many persons, generates psychosomatic reactions. Some detainees will attempt to manipulate jail staff with numerous physical complaints in order to attract attention, plot escape, obtain drugs or create situations in order to register complaints regarding their treatment.

3) Jail personnel cannot risk the consequences in refusing a detainee's need of or request for medical attention. Economics or a detainee's behavioral history must not be allowed to influence the decision to provide emergency medical attention.

4)The current edit ion of the American Medical Association Standards for Health Services in Jails should be consulted as

guidelines for planning development and implementing medical and health services .

b)Minimum Standards

1) Medical and Health Services
All jails shall provide a competent medical authority to ensure that the following medical services are available:

A)Collection and diagnosis of complaints.

B)Treatment of ailments.

C)Prescription of medications and special diets.

D)Arrangements for hospitalization.

E)Liaison with community medical facilities

F)Environmental health inspections.

G)Supervision of special treatment programs, as for alcohol and other drug dependent inmates.

H)Administration of medications.

I)Maintenance of accurate medical records.

J)Maintenance of detailed records of medical supplies, particularly of narcotics, barbiturates and resources other dangerous drugs.

2) Physician and Dental services

A)A medical doctor shall be available to attend the medical and mental health needs of detainees. Arrangements shall be made for a dentist to provide emergency dental care.

B) General medical physician services shall be provided by one or more of the following procedures:

i) On salary in accordance with locally established personnel pay plan.

ii) A contract with a local physician or clinic for full—time coverage at specific hours and for
emergencies.

iii) A contract with a local physician to conduct sick call, be on call for emergencies, and to examine newly admitted persons.

iv) Arrangements with a nearby hospital to provide all needed medical services.

v) Services rendered, without cost, by another agency or department with costs prorated.

3) Admission Examination
all personas admitted to confinement shall undergo a physical examination as prescribed in Section 701.10(b)(10).

A) Newly admitted persons suspected of having any type of communicable disease shall be isolated and immediate referral made to the jail physician for possible transfer to a medical facility, unless the admitting facility can safely and effectively segregate and maintain a medically prescribed course of treatment.

B)All detainees confined shall be given, a medical screening by a medical doctor, a registered nurse or a physician assistant within 14 days and as required by a medical doctor thereafter .

4) Sick Call
A Schedule shall be established for daily sick call.

All persons admitted to confinement shall undergo a physical examination as prescribed in Section 701.40(b)(10).

A)Newly admitted persons suspected of having any type of communicable disease shall be isolated and immediate referral made to the jail physician for possible transfer to a medical facility, unless the admitting facility can safely and effectively segregate and maintain a medically prescribed course of treatment.

B) All detainees confined shall be given a medical screening by a medical doctor, a registered nurse or a physician assistant within 14 days and as required by a medical doctor thereafter.

C)Non-medical jail staff may issue any form of over—the—counter medication, providing the attending physician, gives prior written approval to the facility for such issue and the issue is made at the request of the detainee.

5)Written Record or log
A written record shall. be maintained, as part of the detainee's personal file, of all treatment and medication prescribed, including the date and hour such treatment and medication is administered. A written record shall be maintained of over—the—counter medication, i.e. , aspirin, cough medicine, etc.

20 ILLINOIS ADMINSTRATIVE CODE CH. I, SEC. 701.100

Issued by jail staff. A written record shall be kept of all detainees' special diets.

6) Medical Security
Security of supplies must be maintained at all times.

A)When a physician or other medical personnel attends patients at the facility, a jail officer shall be present to maintain order, prevent theft of medication and/or equipment or supplies, and to assure an orderly process.

B) Drugs, including over-the-counter medication, and other abusable medical supplies shall be secured and accessible only to designated staff.

C) Detainees shall receive on dose of medication at a time and shall be required to ingest medication in the presence of a medical staff member or jail officer.

7) First Aid Training
At least one member of the jail staff on each shift shall have completed a recognized course of first aid training, including cardiopulmonary resuscitation (CPR).

8) First Aid supplies
Those facilities not having a dispensary shall maintain a stock of first aid supplies for the treatment of cuts, bruises, sprains, and other minor injuries.

9) Detainee Access to Medical System
Detainees shall not be assigned to work with or have access to medical supplies, patients, records or medications.

(Source: Amended at 12 Ill. Reg. 12274, effective October 1, 1988.

20 ILLINOIS ADMINISTRATIVE CODE CH. I, SEC. 701.140

every 30 minutes.

B) Dormitories housing more than 25 inmates, must provide personal continuos observation by staff, not including observation by a monitoring device.

C)Radio operators performing jail officer duties, to include 30-minute supervisory checks, shall have jail officer training.

2)Log Record.
A written record book, or log, with entries in ink or time clock record shall be maintained by each jail officer assigned to cell block duty on each shift. Entries shall show the time of each visit by the jail officer, his signature, and any relevant remarks.

3)Kangaroo Courts and Barn Boss System
Kangaroo courts, sometimes called "Sanitary Courts" or "Barn Boss System," or any other similar detainee organization shall be prohibited. No detainee shall be allowed to have authority or disciplinary control over anyone.

4) Night hours

A) Detainees shall be locked in their individual cells between the designated times of lights out and arising in the morning.

B)Designated lights out time shall be determined by administrative policy but shall not be set earlier than 10:00 p.m.

(Source: Amended at 12 Ill. Reg 12274, effective October 1, 1988) Sect ion 701.130 Supervision

a)Introduction
1)The primary objective of any jail is to provide a safe, secure, and humane facility.

2)The primary function of any jail is the safekeeping and control of persons charged with or convicted of a crime. In a detention setting, the gamut of human emotions and behavioral reactions to them can be seen—depression calm, rage. Twenty—four hour supervision by trained personnel is necessary to maintain e safe and secure facility,

3) Proper supervision provides protection to both staff and detainees. Mischievous or malicious acts cannot be easily plotted and carried out and escapes or attempted escapes are more easily thwarted, when staff direction, is constant.

4)Supervision is more than surveillance for it includes the elements of interaction between people. Electronic surveillance should never be relied upon as a primary form of supervision,. It is an important supplement to direct contact supervision, but at best, it provides only conditional watchfulness,

b) Minimum Standards

1)Shift Coverage
There must be Sufficient officers present in the jail, awake and alert at all times, to provide supervision while detainees are in custody.

A)A jail officer shall provide personal observation, not including observation by a monitoring device at least, once

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trained health personnel, and should consist of measures to assist the patient in caring for his/her own oral health, such as instruction in the proper brushing and flossing of teeth. Fluoride toothpaste or oral] Fluoride rinses should be available for all inmates (Please see J-37, Dental Examinations).

J-33 Access to Health Care Services (essential)

Written policy and defined procedures require, and actual practice evidences that information about access to health

care services be communicated orally and in wilting to inmates, in a form and language they understand upon their arrival at the Jail.

Discussion

Access to health care services is a key to quality care in correctional settings and every effort must be made to ensnare that inmates understand how they can receive health care services. The facility should follow the policy of orally explaining to all inmates the procedures for gaining access to health care This notification should take place at the time of receiving screening or upon arrival at a new facility. Special procedures should be developed to ensure that inmates who have difficulty communicating (e.g., those who are development disabled, illiterate, mentally ill or deaf) have access to health services. Where the facility frequently has nonEnglish speaking inmates, procedures should be written in their language's), as well as in English, in the form of a handbook, a handout, or signs in the inmates' housing areas,

J-34 Patient Transport (important)

Written policy and defined procedures require, and actual practice evidences, that inmates are transported safely and in a timely manner for medical, mental health, and dental clinic appointments both inside and outside the jail.

Discussion

The principle of access to care rests on the ability of initiates to request and receive health services in a timely fashion. Custody administration should ensure that security personnel are available to escort inmates from housing to clinic areas in

order to meet scheduled health care appointments. Health staff should record missed appointments and a monthly report on unkempt scheduled clinic appointments should be provided to the health authority (see J-03, Administrative Meetings and Reports).

Frail elderly inmates frequently suffer from chronic conditions that impair their ability to function (e.g., dress, feed, toilet) to the extent that they require special nursing care.

Terminally ill inmates (those with a life expectancy of less than one year due to illness) may require special health services to provide comfort, relief from pain, and special counseling and support in anticipation of death.

Inmates with special mental health needs include self-mutilators, the aggressive mentally ill, suicidal inmates, sex offenders, and substance abusers.

Developmentally disabled inmates may be in need of habitation planning, assistance in accepting the limitations of their conditions, and special attention to their physical safety in he corrections environment.

A treatment plan is a series of written statements specifying the particular course at therapy and the roles of qualified health care personnel in carrying it out. It is individualized, typically multidisciplinary, and based on an assessment of the patient's needs, a statement of short- and long-term goals as well as the methods by which these goals will be pursued. When clinically indicated, the treatment plan gives inmates access to the range of supportive and rehabilitative services

(such as physical therapy, individual or group counseling, and self-help groups) that the treating practitioner deems appropriate.

Individuals with special needs should be followed closely. Regularly scheduled chronic clinics are a good way to ensure continuity of care. Special medical problems should be identified on the outside of the patient's chart A master problem list that includes chronic medication and known drug allergies also may be helpful.

J-51 Intoxication and Withdrawal (essential)

The responsible physician has approved written policy, procedures, and specific protocols for inmates under the influence of alcohol or other drugs or those undergoing withdrawal. Inmates experiencing severe, life-threatening intoxication (overdose) Or withdrawal are immediately transferred to a licensed acute care facility. Established guidelines for the treatment and observation of individuals manifesting mild or moderate symptoms of intoxication or withdrawal from alcohol and other drugs are developed and followed. Individuals at risk for progression to more severe levels of intoxication or withdrawal have kept under constant observation by qualified health professionals or health-trained correctional officers. Detoxification is done only under medical supervision in accordance with local, state, and federal laws.

Discussion

Significant percentages of inmates admitted to correctional Institutions have a history of alcohol and/or other drug abuse.

Newly incarcerated individuals may enter intoxicated or develop symptoms of alcohol or drug withdrawal. Alcohol withdrawal is the abstinence syndrome with the highest mortality rate, although opiate and tranquilizer withdrawal are, on occasion, life-threatening. Barbiturate withdrawal, while rare In confinement settings, is also often life-threatening, Severe withdrawal syndromes should never be managed in the non-hospital setting.

With the exception of methadone detoxification, the treatment of most non-life-threatening withdrawal consists of the amelioration of symptoms and can be managed in the convalescent or out-patient setting. Abstinence syndromes in certain groups (including psychotics, geriatrics, epileptics, pregnant women, and juveniles) require special attention.

Detoxification refers to the process by which an individual Is gradually withdrawn from a drug by the administration of decreasing doses of the drug upon which the person is physiologically dependent, one that is cross-tolerant (antagonistic) to it, or one that has been demonstrated to be effective on the basis of medical research. Detoxification in alcohol-dependent individuals does not involve administering decreasing doses of alcohol: it involves administering decreasing doses of drugs that are cross-tolerant to it (e.g., benzodiazepines

J-52 Chemically Dependent Inmates (important)

Written policy and defined procedures regarding the clinical management of chemically dependent inmates require a diagnosis of chemical dependency by a physician or (if authorized by law) a properly qualified designee; an

individual treatment plan to be developed and implemented; and referral to specified community resources upon release, when appropriate.

Discussion.

Existing community resources should be utilized if possible. The term chemical dependency refers to the state of physiological and/or psychological dependence on alcohol, opium derivatives and synthetic drugs with morphine-like properties (opiates), stimulants (for instance, amphetamines and cocaine), and depressants.

retained separately from the outpatient record, a copy of the discharge summary from the inpatient facility should be placed in the inmate's outpatient chart.

A licensed nursing care facility provides long term or rehabilitative care to patients with chthonic physical or mental disabilities.

J-54 Suicide Prevention (essential)

The Jail has a written policy, defined procedures, and a program for identifying and responding to suicidal individuals. The program components include: identification, training, assessment, monitoring, housing, ,referral, communication intervention, notification, reporting, and review.

Discussion

While inmates may become suicidal at any point during their stay, high-risk periods -include the time immediately upon

admission to a facility; after adjudication, when the inmate is returned to a facility from court; following the receipt of bad news regarding self or family (such as serious illness or the loss of a loved one); and after suffering some type of humiliation or rejection. Individuals who are in the early stages of recovery from severe depression may be at risk as well.

Key components of a suicide prevention program include the following:

1. Identification. The receiving screening form should contain observation and interview items related to the inmate's potential suicide risk (see the sample screening forms in Appendix 3).

2. Training. All staff members who work with Inmates should be trained to recognize verbal and behavioral cues that indicate potential suicide.

3. Assessment. This should be conducted by a qualified mental health professional, who designates the inmate's level of suicide risk.

4. Monitoring. The plan should specify the facility's procedures for monitoring an inmate who has been identified as potentially suicidal. Regular, documented supervision should he maintained.

5- Housing, A suicidal inmate should not be housed or left alone unless constant supervision can be maintained. If a sufficiently large staff is not available that constant supervision can be provided when needed the inmate should not be

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isolated. Rather, s/he should be housed with another resident or in a dormitory and checked every 10-15 minutes. The room should be as nearly suicide-proof as possible (that is, without protrusions of any kind that would enable the inmate to hang him/herself).

6. Referral. The plan should specify the procedures for referring potentially suicidal inmates and attempted suicides to mental health care providers or facilities.

7. Communication. Procedures for communication between health care and correctional personnel regarding the status of the inmate should exist, to provide clear and current information.

8. Intervention. The plan should address how to handle a suicide in progress, including appropriate first-aid measures.
9.Notification. Procedures for notifying jail administrators, outside authorities, and family members of potential, attempted, or completed suicides should be in place.

10.Reporting. Procedures for documenting the identification and monitoring of potential or attempted suicides should be detailed, as should procedures for reporting a completed suicide.

11. Review. The plan should specify the procedures for medical and administrative review if a suicide does occur.

J-55 Sexual Assault. (important)

Health services policies and procedures require, and actual practice evidences, an immediate response to allegations of sexual assault of inmates.

Discussion

Immediate response to an act of sexual assault is of utmost importance. Most jurisdictions define a sexual assault as a sexual act that includes penetration that is coercive or assaultive in nature and where there is the use or the threat of force.

In some jurisdictions, victims of sexual assault are referred to a community facility for treatment and the gathering of evidence. In others, these procedures are performed in-house. In the latter case, the following guidelines are suggested:

(625 ILCS 5/11-501) (Text of Section from P.A. 90-611) Sec. 11-501. Driving while under the influence of alcohol, other-drug, or combination of both. (a) A person shall not drive or be in actual physical control of any vehicle within this State while: (1) the alcohol concentration in the person's blood or breath is 0.08 or more based on the definition of blood and breath units in Section 11-501.2;

(725 ILCS 5/103-3) Sec. 103-3. Right to communicate with attorney and family; transfers. (a) Persons who are arrested shall have the right to communicate with an attorney of their choice and a member of their family by making a reasonable number of telephone calls or in any other reasonable manner. Such communication shall be permitted within a reasonable time after arrival at the first place of custody.

42 U.S.C. Sec. 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

28 U.S.C. Sec. 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

28 U.S.C. Sec. 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

US CONSTITUTION

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, , and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of

any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

CHRISTOPHER HICKS et al, Plaintiffs v. Dennis Mize et al, Defendants

Cause No. 96-CV-369-WDS

FIRST (NINTH) AMENDED COMPLAINT
(Federal Court)

Count I
(Papa - Fourth Amendment Constitutional Claim)
(new count)

Comes now Martha Dyanne Payne, as mother for the minor child, CHRISTOPHER M. HICKS, and for ROBERT HICKS and BILLY HICKS, all minor children of the deceased Steven M. Hicks, and as personal representative of the ESTATE OF STEVEN M. HICKS, by and through their attorneys, RANDALL P. STEELE and CHARLES R. DOUGLAS, and in support of the claim against William Papa, states:

1. Plaintiffs, Martha Dyanne Payne and her minor son, Christopher Hicks, are residents of Madison County in the State of Illinois. The minor children, Robert Hicks and Billy Hicks, reside in the State of Texas. Ken Beckham resides in Madison County.

2. Defendant, William Papa, is a resident of Madison County in the State of Illinois.

3. On August 3, 1991, and prior thereto, the defendant, William Papa, was employed as a deputy sheriff with the Madison County Sheriff's Department.

4. On August 2, 1991, the deceased, Steven Hicks, attended his older brother's, Arthur Chester, funeral. His brother died in an automobile accident on July 30, 1991 in Wood River on Illinois Route 111.

5. Steven Hicks also learned on that day, August 2, 1991, that his 20 year old niece, Cheri Copeland, died in an automobile accident in Pennsylvania while traveling to Arthur Chester's funeral.

6. Steven Hicks was in shock, distressed, morose and depressed over the death of his brother and his close niece.

7. Steven Hicks questioned the value of life, and so indicated by an obvious homemade tatoo on his right arm which stated, "Is life ?".

8. Steven Hicks drank excessive amounts of alcohol after attending his brother's funeral.

9. Steven Hicks left an acquaintance's home where he had been drinking, walked to a nephew's home, and requested a ride to the Two Brothers Motel, where another brother had a room.

10. The nephew provided a ride for Steven Hicks to the Two Brothers Motel located on Route 143 in Bethalto, Illinois.

11. Steven Hicks was highly intoxicated at that time. Combined with his depression, he was in a severe disturbed psychological state, and thus, had a mental defect or mental disorder, or manifested evidence thereof.

12. Steven Hicks contemplated suicide, and to accomplish this act, laid underneath an automobile of an employee/owner of the motel, such that it would be unlikely that the employee/owner would discover him before getting into his car and driving off, and thus, upon leaving would run over Steven Hicks, causing his death.

13. Steven Hicks laid his upper torso underneath the automobile, and passed out, due to the excessive alcohol content in his blood, which was in excess .237 milligrams per liter.

14. The employee/owner, Jim Bridges, discovered Steven Hicks unconscious underneath his automobile. He telephoned the Madison County sheriff's department to handle the situation.

15. The defendant, William Papa, was dispatched to the Two Brothers Motel.

16. The defendant aroused and awakened Steven Hicks and determined Steven Hicks' name and birth date.

17. The defendant, then determined by a radio transmission to the sheriff's department headquarters, that an outstanding warrant had been issued by Judge Robert Hennessey against Steven Hicks on March 14, 1990.

18. The warrant was issued on a misdemeanor complaint signed by a peace officer from the city of Madison, Leonard Ritz, on September 12, 1989, claiming that Steven Hicks committed a state charge of disorderly conduct, a Class C misdemeanor.

19. A $2,000.00 bail bond was set by the judge.

20. Upon becoming conscious, Steven Hicks repeatedly exclaimed in the presence of defendant, "All I want to do is die!". Steven Hicks also acted angry and cursed defendant and the Madison city jailor.

21. Defendant determined in his mind that Steven Hicks was confused and highly intoxicated.

22. Defendant was at the end or past his normal work shift hours.

23. Steven Hicks was in need of immediate medical attention for his mental and physical conditions of depression and high intoxication.

24. Steven Hicks, like all citizens, enjoyed the constitutional right to be presumed innocent of the alleged Class C misdemeanor of disorderly conduct.

25. It was foreseeable by a reasonable man under the circumstances that Steven Hicks was in need of immediate medical attention.

26. It was foreseeable by a reasonable man under the circumstances that Steven Hicks posed a substantial risk of self harm.

27. Pursuant to 725 ILCS 5/103-2(c) defendant had a duty to treat Steven Hicks "humanely" and "if required, [obtain] medical treatment."

28. Defendant, William Papa, upon arresting and taking custody of Steven Hicks, had a common law, statutory, and constitutional duty to protect Steven Hicks from unreasonable harm, including self-inflicted harm, under the circumstances of defendant knowing, or should have been knowing, that there existed a substantial risk that Steven Hicks might hurt himself.

29. After deciding that he would arrest Steven Hicks pursuant to the warrant, defendant, William Papa, had a duty, under the circumstances, to provide immediate and proper necessary medical attention.

30. Defendant, William Papa, had a common law, statutory, and constitutional duty to investigate the circumstances of Steven Hicks lying underneath the car, being unconscious, being highly intoxicated, being confused, and being depressed.

31. Defendant, William Papa, had a common law, statutory, and constitutional duty to investigate the circumstances of Steven Hicks exclaiming his desire to die and being angry and cursing.

32. Defendant, William Papa, after taking custody of Steven Hicks had a common law, statutory, and

constitutional duty to investigate and reasonably determine Steven Hicks' physical and mental health condition, and thus, whether he needed immediate medical attention before being incarcerated or released on bail.

33. Defendant, William Papa, after taking custody of Steven Hicks had a common law, statutory, and constitutional duty to investigate and reasonably determine Steven Hicks' mental status, or potential mental status, or whether he suffered from a mental disorder or defect, or showed evidence thereof, such that he required immediate medical attention, protective custody, and constant supervision as per 20 Ill.Adm.Code, Ch. I, Section 720.30(d).

34. Defendant had a common law, statutory, and constitutional duty to inform any jailor of the circumstances of Steven Hicks' arrest and of the signs and indicators that Steven Hicks displayed which posed a substantial risk that he might injure himself, if not properly monitored and protected while in the jailors' custody.

35. That notwithstanding the duties owed to Steven Hicks as alleged in paragraphs 27 through 34 above, the defendant was negligent of the above duties, in one or more of the following respects:

(a) by failing to investigate and determine the extent of alcohol, and thus level of intoxication, of Steven Hicks;

(b) by failing to investigate or reasonably determine that Steven Hicks was influenced by his alcohol intake, such that he was more incapable of taking care of himself than most persons, more incapable of making reasonable and rational decisions, and posed a substantial risk to injure himself while in the custody of police authorities;

(c) by failing to investigate or reasonably determine whether Steven Hicks had been injured, i.e., hit over the head, mugged, etc.;

(d) by failing to investigate or reasonably determine whether Steven Hicks was suffering from any illness, i.e., diabetes, poisoning, etc.;

(e) by failing to investigate or reasonably determine whether Steven Hicks was suffering from any disease process;

(f) by failing to investigate or reasonably determine whether Steven Hicks was suffering from any mental disability, disorder or defect;

(g) by failing to investigate or reasonably determine whether Steven Hicks was suffering from any mental distress;

(h) by failing to investigate or reasonably determine Steven Hicks' mental status in general;

(i) by failing to investigate or reasonably determine Steven Hicks' emotional status in general;

(j) by failing to investigate or observe Steven Hicks to reasonably determine whether Steven Hicks had any obvious injuries or illnesses (i.e., diabetes, epilepsy, or past treatment for mental disorders or allergies) requiring immediate medical attention and care;

(k) by failing to investigate or reasonably determine whether Steven Hicks suffered from any mental disorder, especially after determining that Steven Hicks was disoriented, and by failing to investigate or determine why Steven Hicks was disoriented and confused, and what contributed to his confusion;

(l) by failing to investigate or reasonably determine why Steven Hicks did not know where he was located;

(m) by failing to take notice of the substantial factors that demonstrated to a reasonable person under the circumstances that Steven Hicks posed a substantial risk of self-harm;

(n) by failing to investigate or reasonably determine whether Steven Hicks was angry, sad or morose;

(o) by failing to investigate or reasonably determine whether Steven Hicks was likely to inflict self harm while in his custody or while incarcerated, or before being released;

(p) by failing to examine Steven Hicks physically to determine if there were any physical injuries;

(q) by not asking sufficient questions to determine Steven Hicks' mental status due to his intoxication, or recent circumstances, or in general, and whether he suffered from a temporary or permanent mental disorder or defect;

(r) by failing to independently investigate any of the circumstances of Steven Hicks' unconsciousness or gross intoxication;

(s) by failing to investigate or determine any of the circumstances of Steven Hicks being found laying partly underneath a car with his upper torso underneath the automobile;

(t) by failing to collect important information required by the jailor, necessary to properly process Steven Hicks before his being incarcerated;

(u) by failing to collect important information required by the jailor, necessary to properly incarcerate Steven Hicks;

(v) by failing to determine whether Steven Hicks wanted to exercise his right to place a reasonable number of phone calls;

(w) by failing to determine whether Steven Hicks wanted to exercise his right to talk to a lawyer;

(x) by failing to determine whether Steven Hicks wanted to exercise his right to talk to his family;

(y) by failing to determine whether Steven Hicks wanted to bail himself out or obtain bail from family members;

(z) by failing to reasonably determine, or ask questions, of Steven Hicks' history of activities that day;

(aa) by failing to determine the basic information required of police officers and jailors in processing arrestees;

(bb) by ignoring obvious signs of mental distress;

(cc) by ignoring obvious signs of physical distress;

(dd) by ignoring obvious signs of emotional distress;

(ee) by ignoring the fact that drunkenness is most often a symptom of various mental and emotional problems;

(ff) by ignoring suicidal signs, including his exclamations that, "All I want to do is die!," being stated repeatedly;

(gg) by failing to provide any information or factual circumstances to the jailor at the Madison City jail, surrounding
Steven Hicks' arrest, which would warrant immediate medical attention and/or constant observation while under custody and/or incarceration;

(hh) by failing to determine Steven Hicks' place of residence.

36. As a proximate result of one or more of the above mentioned acts of the defendant, Steven Hicks, while incarcerated at the Madison city jail on August 3, 1991, suffered his death, and prior injuries, by hanging himself with a blanket strip found within the jail cell.

37. The decedent left surviving him as his next of kin, plaintiffs, Christopher M. Hicks, Robert Hicks, and Billy Hicks, all minor children.

38. None of the next of kin were guilty of any negligent, wilful and wanton, or intentional acts or omissions which contributed to the death of Steven M. Hicks.

39. The minor children of Steven Hicks have suffered loss of pecuniary damages, including support, society, and companionship.

40. Steven Hicks suffered mental and physical pain and agony during the hanging.

41. Plaintiffs Beckhams suffered funeral expenses of the deceased Steven Hicks.

42. At all times mentioned herein, defendant Papa was working as a sheriff's deputy for the county of Madison, performing his duties as a sheriff's deputy and acting under color of statute, customs, ordinances and usage of the state of Illinois and county of Madison.

43. As a result of the improper conduct in the arrest and detention of plaintiff as alleged above, defendant deprived plaintiff of his right to be free from an unreasonable seizure as guaranteed by the Fourth and Fourteenth Amendments of the Constitution of the United States of America and 42 USC § 1983.

44. The arrest and detention of plaintiff and his demise was prior to any judicial determination of probable cause for his arrest and was pursuant to a warrant for failure to appear for which there had been no judicial determination of his probable cause for arrest.

45. The conduct of defendant as alleged above was deliberately indifferent and in callous disregard of plaintiff's constitutional rights.

WHEREFORE, plaintiff, a representative of the next of kin, prays for judgment against the defendant, William Papa, for
compensatory and punitive damages, in the sum in excess of $500,000.00 plus costs of suit.

Count II
(Papa - Fifth Amendment Constitutional Claim)
(new count)

Comes now Martha Dyanne Payne, as mother for the minor child, CHRISTOPHER M. HICKS, and for ROBERT HICKS and BILLY HICKS, all minor children of the deceased Steven M. Hicks, and as blanket strip found within the jail cell.

24. The decedent left surviving him as his next of kin,
plaintiffs, Christopher M. Hicks, Robert Hicks, and Billy Hicks, all minor children.

25. That none of the next of kin were guilty of any negligent, wilful and wanton, or intentional acts or omissions which contributed to the death of Steven M. Hicks.

26. The minor children of Steven Hicks have suffered loss of pecuniary damages, including support, society, and companionship.

27. Steven Hicks suffered mental and physical pain and agony during the hanging.

28. Plaintiffs Beckhams suffered funeral expenses of the deceased Steven Hicks.

WHEREFORE, plaintiff, a representative of the next of kin, prays for judgment against the defendant, County of Madison, for compensatory and punitive damages, in the sum in excess of $500,000.00 plus costs of suit.

Count V
(Papa/Failure To Hold/Fourth Amendment Claim)

Comes now Martha Dyanne Payne, as mother for the minor child, CHRISTOPHER M. HICKS, and for ROBERT HICKS and BILLY HICKS, all minor children of the deceased Steven M. Hicks, and as personal representative of the ESTATE OF STEVEN M. HICKS, by and through their attorneys, RANDALL P. STEELE and CHARLES R. DOUGLAS, and in support of the claim against Deputy Sheriff William Papa, states:

1. Plaintiffs, Martha Dyanne Payne and her minor son, Christopher Hicks, are residents of Madison County in the State of Illinois. The minor children, Robert Hicks and Billy Hicks, reside in the State of Texas. Ken Beckham resides in Madison County.

2. Defendant, William Papa, is a resident of Madison County in the State of Illinois.

3. On August 2 & 3, 1991, William Papa, was employed as a deputy sheriff with the Madison County Sheriff's Department and under the employ, direction and control of defendant.

4. William Papa was an agent of defendant, Bob Churchich.

5. Bob Churchich was responsible for William Papa's negligence and omissions pursuant to 55 ILCS 5/3-6016.

7. Defendant is a sworn peace officer and required to abide by state statutes pursuant to 730 ILCS 125/25, 55 ILCS 5/3-6010 and Section 3, Article XIII and Section 4, Article VII of the Illinois Constitution.

8. Defendant, as a sworn peace officer, is required to abide by common law and constitutional requirements pursuant to 55 ILCS 5/3-6010 and Section 3,

Article XIII and Section 4, Article VII of the Illinois Constitution.

9. Defendant, as a sworn peace officer, is required to abide by the rules and regulations of the Department of Corrections pursuant to the same statutes alleged above.

10. There existed at that time, and now, regulations circumstances to the jailor at the Madison City jail, surrounding Steven Hicks' arrest, which would warrant immediate medical attention and/or constant observation while under custody and/or incarceration;

(hh) by failing to determine Steven Hicks' place of residence.

44. As a proximate result of one or more of the above mentioned acts of the defendant, Steven Hicks, while incarcerated at the Madison city jail on August 3, 1991, suffered his death, and prior injuries, by hanging himself with a blanket strip found within the jail cell.

45. On August 3, 1991, Steven Hicks was arrested by defendant, and transported to the Madison city lockup in Madison, Illinois, and released to the custody of the police dispatcher, Dennis Mize, where he was incarcerated.

46. William Papa relinquished the custody of Steven Hicks to the police dispatcher, Dennis Mize, where Steven Hicks was incarcerated.

47. There existed at that time, and now, a regulation, 20 Ill.Adm.Code, Ch I, Section 720.30, promulgated by the Department of Corrections with respect to the use of city jails/lockups which states:

Section 720.30 Use of Jails/Lockups

a. The jail/lockup, hereinafter referred to as a jail, is a security facility operated by the police department, for the temporary

detention of persons held for investigation pending disposition of their cases by the judiciary or awaiting transfer to another institution.

b. The maximum period of detention in a jail should not normally exceed 48 hours, except when detention occurs at the beginning of a weekend or holiday.

c. No minor under 16 years of age may be confined in a jail or place ordinarily used for the confinement of prisoners in a police station. Minors under 17 years of age must be kept separate from confined adults and may not at any time be kept in the same cell, room, or yard with adults confined pursuant to the criminal law. (Section 3-06(5) of the Juvenile Court Act (Ill. Rev. Stat. 1985, ch. 37, par. 703-6(5).)

d. A detainee with a known history of mental disorder or mental defect, or who shows evidence of such condition, shall be detained only temporarily in a municipal jail and transferred as soon as possible, in the event such a detainee is received, he shall be

> afforded protective custody and constant supervision until transferred. The Chief of Police or the Chief Jailor shall immediately notify the appropriate authorities regarding the mental condition of the detainee so that a transfer can be effected.

48. The above regulation was promulgated for the protection and safety of prisoners and detainees and to meet statutory and constitutional requirements.

49. The above regulation was promulgated to insure common, equal, and lawful treatment of persons arrested for state offenses in each county of the State of Illinois, by its constitutionally created county officer - its sheriff.

50. By statutory law, a person arrested by a sheriff or sheriff's deputy for a state charge must remain within the custody of the sheriff until released as a result of appropriate bail or by judicial order, pursuant to 730 ILCS 125/4, 125/5, 125/9, 125/10, 125/20, and 720 ILCS 5/2-12 and 5/2-14.

51. By common law, a person arrested by a sheriff or sheriff's deputy for a state charge must remain within the custody of the sheriff until released as a result of appropriate bail or by judicial order.

52. When Steven Hicks was arrested on August 3, 1991, defendant determined that Steven Hicks had been charged, and that a warrant existed, for a state charge of disorderly conduct, a Class C misdemeanor.

53. Because a warrant had been issued, there was no investigation to be performed.

54. Because Steven Hicks was in the custody of a deputy sheriff, there was no need to await transfer to the Madison County jail.

55. There existed no exigency, nor other reasonable circumstance, to transport and incarcerate Steven Hicks in the Madison city lockup.

56. Defendant took custody of Steven Hicks pursuant to the warrant.

57. It is the common law, statutory, and constitutional duty of the sheriff, and his deputies, to maintain custody of a person arrested on a warrant for a state charge until that person posts bail or is released by the Court.

58. It is the common law, statutory, and constitutional duty of the sheriff, or deputy sheriff, that once he has custody of an arrestee, required to be housed in the county jail, to place and keep that person in the county jail, until bailed out or released by Court order.

59. Defendant had a common law, statutory, and constitutional duty to incarcerate Steven Hicks in the Madison County Jail, as opposed to a city lockup.

60. The duties alleged above are non-delegable.

61. The purpose of the laws and duties alleged above is for the better and more fully funded protection of the health and safety of state charged persons.

62. The purpose of the laws and duties alleged above is to provide consistent equal treatment of state charged persons by each of the counties and their elected chief law enforcement officer - the sheriff, as opposed to unequal treatment by a myriad of municipalities.

63. The defendant was aware that the Madison County Jail better protected the health and safety of state charged arrestees than the Madison city jail, or other city jails within the county.

64. Defendant was aware that the Madison city jail previously did not, and financially could not, provide sufficient health or safety protection to state charged arrestees.

65. It was foreseeable to a reasonable man, under the circumstances, that failure to maintain custody and house Steven Hicks in the Madison County Jail would create a substantial risk of self harm to Steven Hicks.

66. It was foreseeable to a reasonable man, under the circumstances, that failure to maintain custody and house defendant in the Madison County Jail, thus leaving protection and care of Steven Hicks in the responsibility of persons who were not in the defendant's control, created a substantial risk of harm to Steven Hicks.

67. It was foreseeable to a reasonable man under the circumstances to expect negligent and wilful and wanton misconduct on the part of the City of Madison and its police department in the care of its detainees.

68. Instead of jailing Steven Hicks in the Madison County Jail, defendant was negligent by physically releasing Steven Hicks to the Madison city police department and to its dispatcher, Dennis Mize, who had no lawful authority to take custody of, or imprison Steven Hicks in a Madison city lockup.

69. Despite releasing Steven Hicks to the Madison city police department, the defendant maintained legal custody, and therefore, continued to have the common law, statutory, and constitutional duties to reasonably protect Steven Hicks from harm, including self-inflicted harm under the circumstances.

70. By physically releasing Steven Hicks to the authority of the Madison city police department via its dispatcher, Dennis Mize, the City of Madison, Dennis Mize

and its police department became the agents of the defendant with respect to the duties owed to Steven Hicks.

71. The defendant was by common law, statutory, and constitutionally responsible for the method and manner of treatment of Steven Hicks while he was incarcerated in the Madison city lockup.

72. The defendant is vicariously responsible for the conduct of his agents, including the conduct of the Madison city police department and Dennis Mize, as a result of his duty to maintain custody of a person arrested on a warrant for a state charge.

73. Steven Hicks was left in the exclusive custody of Dennis Mize, a police dispatcher employed by the City of Madison.

74. When Steven Hicks was brought to the Madison city lockup at approximately 1:00 a.m. on August 3, 1991, it was the duty of Dennis Mize to provide Steven Hicks with medical attention, to regularly monitor his cell, and to provide for his care, well-being, and protection, including protection from self-inflicted injury under the circumstances.

75. The highly intoxicated state of Steven Hicks was known to Dennis Mize before Steven Hicks was incarcerated.

76. The depression, state of confusion, mental defect or mental disorder, or evidence thereof, of Steven Hicks was known to Dennis Mize before Steven Hicks was incarcerated.

77. Notwithstanding his duties, including those alleged in Count I, paragraphs 28 through 33, Dennis Mize and the City of Madison was negligent, and/or deliberately indifferent and in callous disregard of his duties and the rights of Steven Hicks, in one or more of the following ways:

(a) by failing to make a cell check every half hour to ascertain the physical well-being of Steven Hicks

and record the same in a log, in violation of 20 Ill.Adm.Code, Ch. I, Section 720.60 and local rules of the city lockup;

(b) by failing to place Steven M. Hicks in a cell under constant observation;

(c) by failing to provide immediate medical services for Steven M. Hicks;

(d) by failing to abide by multiple state regulations, Title 20, Ch. I, Section 720.5 et seq., with respect to the lockup facilities;

(e) by failing to investigate or take notice of the condition and circumstances surrounding Steven Hicks' intoxication, confusion, anger and arrest;

(f) by failing to provide a means to watch the activities of Steven Hicks while celled;

(g) by failing to alter their policies and procedures after a prior recent suicide;

(h) by failing to require training of their jailor, Dennis Mize, on the state jail regulations alleged above.

78. As a proximate result of the above alleged misconduct of the defendant, Dennis Mize, and the City of Madison, Steven Hicks suffered his death, and prior injuries, by hanging himself on a blanket strip found within the jail cell.

79. Due to the misconduct of his agents, and himself, as alleged above, defendant is vicariously liable.

80. The decedent Steven Hicks left surviving him his next of kin, Christopher M. Hicks, Robert Hicks and Billy Hicks, all minor children.

81. None of the next of kin were guilty of any negligent, wilful and wanton, or intentional acts or omissions which contributed to the death of Steven Hicks.

82. The minor children of Steven Hicks have suffered loss of pecuniary damages, including support, society, and companionship.

83. Steven Hicks suffered mental and physical pain and agony during the hanging.

84. Plaintiffs Beckhams suffered funeral expenses of the deceased Steven Hicks.

85. At all times mentioned herein, defendant Papa was working as a sheriff's deputy for the county of Madison, performing his duties as a sheriff's deputy and acting under color of statute, customs, ordinances and usage of the state of Illinois and county of Madison.

86. As a result of the improper conduct in the arrest and detention of plaintiff as alleged above, defendant deprived plaintiff of his right to be free from an unreasonable seizure as guaranteed by the Fourth and Fourteenth Amendments of the Constitution of the United States of America and 42 USC § 1983.

WHEREFORE, plaintiff, a representative of the next of kin, prays for judgment against the defendant, William Papa, for compensatory damages, in excess of $250,000.00 plus costs of suit.

Count VI
(Papa/Failure To Hold/Fifth Amendment Claim)

Comes now Martha Dyanne Payne, as mother for the minor child, CHRISTOPHER M. HICKS, and for ROBERT HICKS and BILLY HICKS, all minor children of the deceased Steven M. Hicks, and as personal representative of the ESTATE OF STEVEN M. HICKS, by and through their attorneys, RANDALL P. STEELE and CHARLES R. DOUGLAS, and in support of the claim against Deputy Sheriff William Papa, states:

1. Plaintiffs, Martha Dyanne Payne and her minor son, companionship.

84. Steven Hicks suffered mental and physical pain and agony during the hanging.

85. Plaintiffs Beckhams suffered funeral expenses of the deceased Steven Hicks.

86. Defendant's conduct as alleged above warrants punitive damages.

WHEREFORE, plaintiff, a representative of the next of kin, prays for judgment against the defendant, William Papa, for compensatory and punitive damages, in the sum greater than $500,000.00 plus costs of suit.

Count VIII
(Churchich - Institution of Policy/Direct Misconduct)

Comes now Martha Dyanne Payne, as mother for the minor child, CHRISTOPHER M. HICKS, and for ROBERT HICKS and BILLY HICKS, all minor children of the deceased Steven M. Hicks, and as personal representative of the ESTATE OF STEVEN M. HICKS, by and through their attorneys, RANDALL P. STEELE and CHARLES R. DOUGLAS, and in support of the claim against Sheriff Bob Churchich, states:

1. Plaintiffs, Martha Dyanne Payne and her minor son, Christopher Hicks, are residents of Madison County in the State of Illinois. The minor children, Robert Hicks and Billy Hicks, reside in the State of Texas. Ken Beckham resides in Madison County.

2. Defendant, Madison County Sheriff Bob Churchich, is a resident of Madison County in the State of Illinois.

3. On August 2 & 3, 1991, William Papa, was employed as a deputy sheriff with the Madison County Sheriff's Department and under the employ, direction and control of defendant.

4. William Papa was an agent of defendant, Bob Churchich.

5. Bob Churchich was responsible for William Papa's negligence and omissions pursuant to 55 ILCS 5/3-6016.

6. The acts of a deputy are considered by law to be the acts of the sheriff pursuant to 55 ILCS 5/3-6015.

7. Defendant, as sheriff, and his deputies, all as sworn peace officers, are required by law to abide by state statutes pursuant to 730 ILCS 125/25, 55 ILCS 5/3-6003, 5/3-6004, 5/3-6005, 5/3-6010 and Section 3, Article XIII and Section 4, Article VII of the Illinois Constitution.

8. Defendant, as sheriff, and his deputies, all as sworn peace officers, are required to abide by common law and constitutional requirements pursuant to 55 ILCS 5/3-6003, 5/3-6004, 5/3-6010 and Section 3, Article XIII and Section 4, Article VII of the Illinois Constitution.

9. Defendant, as sheriff, and his deputies, all as sworn peace officers, are required to abide by the rules and regulations of the Department of Corrections pursuant to the same statutes alleged above.

10. There existed at that time, and now, regulations promulgated by the Department of Corrections pursuant to 730 ILCS 5/3-15-2 governing the use and operation of county and municipal jails, and establishing minimum standards for the facilities and for the "treatment of inmates with respect to their health and safety."

11. The regulations of the Department of Corrections define the lawful and responsible conduct of law

enforcement personnel and their public employers throughout the state of Illinois, including sheriffs and deputy sheriffs.

12. On August 2, 1991, the deceased, Steven Hicks, attended his older brother's, Arthur Chester, funeral. His brother died in an automobile accident on July 30, 1991 in Wood River on Illinois Route 111.

13. Steven Hicks also learned on that day, August 2, 1991, that his 20 year old niece, Cheri Copeland, died in an automobile accident in Pennsylvania while traveling to Arthur Chester's funeral.

14. Steven Hicks was in shock, distressed, morose and depressed over the death of his brother and his close niece.

15. Steven Hicks questioned the value of life, and so indicated by an obvious homemade tatoo on his right arm which stated, "Is life ?".

16. Steven Hicks drank excessive amounts of alcohol after attending his brother's funeral.

17. Steven Hicks left an acquaintance's home where he had been drinking, walked to a nephew's home, and requested a ride to

circumstances to the jailor at the Madison City jail, surrounding Steven Hicks' arrest, which would warrant immediate medical attention and/or constant observation while under custody and/or incarceration;

(hh) by failing to determine Steven Hicks' place of residence.

44. As a proximate result of one or more of the above mentioned acts of the defendant, Steven Hicks, while incarcerated at the Madison city jail on August 3, 1991, suffered his death, and prior injuries, by hanging himself with a blanket strip found within the jail cell.

45. On August 3, 1991, Steven Hicks was arrested by deputy sheriff William Papa, and transported to the Madison city lockup in Madison, Illinois.

46. William Papa relinquished the custody of Steven Hicks to the police dispatcher, Dennis Mize, where Steven Hicks was incarcerated.

47. There existed at that time, and now, a regulation, 20 Ill.Adm.Code, Ch I, Section 720.30, promulgated by the Department of Corrections with respect to the use of city jails/lockups which states:

Section 720.30 Use of Jails/Lockups

a. The jail/lockup, hereinafter referred to as a jail, is a security facility operated by the police department, for the temporary detention of persons held for investigation pending disposition of their cases by the judiciary or awaiting transfer to another institution.

b. The maximum period of detention in a jail should not normally exceed 48 hours,

except when detention occurs at the beginning of a weekend or holiday.

c. No minor under 16 years of age may be confined in a jail or place ordinarily used for the confinement of prisoners in a police station. Minors under 17 years of age must be kept separate from confined adults and may not at any time be kept in the same cell, room, or yard with adults confined pursuant to the criminal law. (Section 3-06(5) of the Juvenile Court Act (Ill. Rev. Stat. 1985, ch. 37, par. 703-6(5).)

d. A detainee with a known history of mental disorder or mental defect, or who shows evidence of such condition, shall be detained only temporarily in a municipal jail and transferred as soon as possible, in the event such a detainee is received, he shall be afforded protective custody and constant supervision until transferred. The Chief of Police or the Chief Jailor shall immediately notify the appropriate authorities regarding the mental condition

of the detainee so that a transfer can be effected.

48. The above regulation was promulgated for the protection and safety of prisoners and detainees and to meet statutory and constitutional requirements.

49. The above regulation was promulgated to insure common, equal, and lawful treatment of persons arrested for state offenses in each county of the State of Illinois, by its constitutionally created county officer - its sheriff.

50. By statutory law, a person arrested by a sheriff or sheriff's deputy for a state charge must remair within the custody of the sheriff until released as a result of appropriate bail or by judicial order, pursuant to 730 ILCS 125/4, 125/5, 125/9, 125/10, 125/20, and 720 ILCS 5/2-12 and 5/2-14.

51. By common law, a person arrested by a sheriff or sheriff's deputy for a state charge must remain within the custody of the sheriff until released as a result of appropriate bail or by judicial order.

52. When Steven Hicks was arrested on August 3, 1991, William Papa determined that Steven Hicks had been charged, and that a warrant existed, for a state charge of disorderly conduct, a Class C misdemeanor.

53. Because a warrant had been issued, there was no investigation to be performed.

54. Because Steven Hicks was in the custody of a deputy sheriff, there was no need to await transfer to the Madison County jail.

55. There existed no exigency, nor other reasonable circumstance, to transport and incarcerate Steven Hicks in the Madison city lockup.

56. William Papa took custody of Steven Hicks pursuant to the warrant.

57. It is the common law, statutory, and constitutional duty of the sheriff, and his deputies, to maintain custody of a
person arrested on a warrant for a state charge until that person posts bail or is released by the Court.

58. It is the common law, statutory, and constitutional duty of the sheriff, or deputy sheriff, that once he has custody of an arrestee, required to be housed in the county jail, to place and keep that person in the county jail, until bailed out or released by Court order.

59. Defendant, and William Papa, had a common law, statutory, and constitutional duty to incarcerate Steven Hicks in the Madison County Jail, as opposed to a city lockup.

60. The duties alleged above are non-delegable.

61. The purpose of the laws and duties alleged above is for the better and more fully funded protection of the health and safety of state charged persons.

62. The purpose of the laws and duties alleged above is to provide consistent equal treatment of state charged persons by each of the counties and their elected chief law enforcement officer - the sheriff, as opposed to unequal treatment by a myriad of municipalities.

63. The defendant was aware that the Madison County Jail better protected the health and safety of state charged arrestees than the Madison city jail, or other city jails within the county.

64. Defendant was aware that the Madison city jail previously did not, and financially could not, provide sufficient health or safety protection to state charged arrestees.

65. It was foreseeable to a reasonable man, under the circumstances, that failure to maintain custody and house

Steven Hicks in the Madison County Jail would create a substantial risk of self harm to Steven Hicks.

66. It was foreseeable to a reasonable man, under the circumstances, that failure to maintain custody and house defendant in the Madison County Jail, thus leaving protection and care of Steven Hicks in the responsibility of persons who were not in the defendant's control, created a substantial risk of harm to Steven Hicks.

67. It was foreseeable to a reasonable man under the circumstances to expect negligent and wilful and wanton misconduct on the part of the City of Madison and its police department in the care of its detainees.

68. Instead of jailing Steven Hicks in the Madison County Jail, William Papa, negligently, intentionally, and in reckless disregard of Steven Hicks' rights, physically relinquished Steven Hicks to the Madison city police department via its dispatcher, Dennis Mize, who had no lawful authority to take custody of, or incarcerate Steven Hicks in a Madison city lockup.

69. Defendant ratified, approved, and ordered William Papa to act as alleged in paragraph 68 above.

70. Despite releasing Steven Hicks to the Madison city police department, the defendant through his deputy, maintained legal custody, and therefore, continued to have the common law, statutory, and constitutional duties to reasonably protect Steven Hicks from harm, including self-inflicted harm, under the circumstances.

71. By physically releasing Steven Hicks to the authority of the Madison city police department via its dispatcher, Dennis Mize, the City of Madison, Dennis Mize and its police department became the agents of the sheriff, with respect to the duties owed to Steven Hicks.

72. The defendant, through deputy Papa, was by common law, statutorily, and constitutionally responsible for

the method and manner of treatment of Steven Hicks while he was incarcerated in the Madison city lockup.

73. The defendant is vicariously responsible for the conduct of his agents, including the conduct of the Madison city police department and Dennis Mize, as a result of his duty to maintain custody of a person arrested on a warrant for a state charge.

of pecuniary damages, including support, society, and companionship.

84. Steven Hicks suffered mental and physical pain and agony during the hanging.

85. Plaintiffs Beckhams suffered funeral expenses of the deceased Steven Hicks.

86. Defendant's conduct as alleged above warrants punitive damages.

87. Defendant Churchich, despite knowledge of his common law duties as alleged above, instituted a policy, in conjunction and cooperation with others, where he ignored his duties and ordered his deputies and jailors to house state charged misdemeanants in city lockups, if available, as opposed to placing them in the county jail.

88. The defendant, despite knowing or should have been knowing, that city lockups were inferior to the county jail in providing protection for detainees from injury and self-inflicted harm, instituted a policy that housed state charged misdemeanants in city lockups, as opposed to placing them in the county jail.

WHEREFORE, plaintiff, a representative of the next of kin, prays for judgment against the defendant, Bob Churchich, for compensatory and punitive damages, in the sum in excess of $500,000.00 plus costs of suit.

87. Defendant was aware that the Madison city facility did not properly care for its detainees, and had caused

prior wrongful injuries and deaths due to this misconduct, but despite such knowledge, negligently and with deliberate indifference and in callous disregard of Steven Hicks' rights, entrusted the City of Madison with his prisoners' care, including Steven Hicks.

WHEREFORE, plaintiff, a representative of the next of kin, prays for judgment against the defendant, Bob Churchich, for compensatory and punitive damages, in the sum in excess of $500,000.00 plus costs of suit.

Count XI
(Madison County, Section 1983 Claim)

Comes now Martha Dyanne Payne, as mother for the minor child, CHRISTOPHER M. HICKS, and for ROBERT HICKS and BILLY HICKS, all minor children of the deceased Steven M. Hicks, and as personal representative of the ESTATE OF STEVEN M. HICKS, by and through their attorneys, RANDALL P. STEELE and CHARLES R. DOUGLAS, and in support of the claim against Madison County, states:

1. That plaintiffs, Martha Dyanne Payne and her minor son, Christopher Hicks, are residents of Madison County in the State of Illinois. That the minor children, Robert Hicks and Billy Hicks, reside in the State of Texas. Ken Beckham resides in Madison County.

2. The defendant, County of Madison, is a county located within the State of Illinois.

3. That on or about August 3, 1991, Steven M. Hicks was incarcerated at the Madison city lockup in Madison, Illinois.

4. That on said date, deputy sheriff William Papa, placed Steven Hicks under arrest and released him to the City of Madison police department.

5. That prior to, on, and after said date and arrest, it was the duty of the defendant, County of Madison, to provide for the care and well-being of Steven Hicks by providing a sufficient county jail facility for safe and healthful housing of all persons required to be incarcerated by the defendant.

6. The defendant has a statutory duty, to provide and fund, a sufficient jail facility, and for the keeping and maintaining of prisoners pursuant to 730 ILCS 125/1 et seq. (especially 125/5 and 125/20 and 55 ILCS 5/5-1106).

7. The defendant had a statutory duty to abide by the standards contained in the regulations promulgated pursuant to 730 ILCS 5/3-15-2.

8. The defendant has a common law and constitutional duty while providing a jail, to provide proper protection of its inmates against harm, including self-inflicted harm, under particular circumstances.

9. Prior to Steven Hicks' suicide, the defendant had been made aware that the Madison County Jail was insufficient and overcrowded, and that the defendants' maintenance and keeping of misdemeanants posed serious risks of harm to them, by Grand Juries, summoned for the purposes of determining whether the defendant was meeting its statutory obligations and duties as alleged above, pursuant to 703 ILCS 125/22 and 125/23.

10. The Grand Jury on August 23, 1990, recommended in a Grand Jury Report that the "County should put forth a bond to the voters for the additional 50 cells requested by the sheriff to keep misdemeanor [sic] crimes separate from the felons." On August 23, 1990, in a Final Grand Jury Report, the Grand Jury reported, "We recommend

expansion planning for the Madison County Jail be given high priority, and, hopefully, this would eliminate the overcrowding." In the report of August 22, 1991, the Grand Jury stated:

> "In reviewing recommendations from previous Grand Juries we note that numerous recommendations seem to have been ignored; some for as long as six years. Such indifference has a negative effect upon the enthusiasm in recommending changes to improve the efficiency of the court system and other Madison County facilities. We, therefore, strongly urge the Court to take these suggestions seriously and follow through on a timely basis or discontinue the requirement for Grand Jury recommendations."

11. These reports were transmitted to the County Clerk and presented to the County Board at its meetings pursuant to 730 ILCS 125/23.

12. The defendant, via its county board, had repeatedly been made aware by sheriff Churchich pursuant to 730 ILCS 125/12 that the Madison County Jail was insufficient and overcrowded, and that it failed to properly care for the maintenance and keeping of its misdemeanor detainees, posing serious risks of harm to them.

13. The defendant via its county board had been repeatedly made aware, the Department of Corrections and the Illinois Attorney General, that the overcrowded jail did not abide by state statutes and regulations, as alleged above, and therefore, would not provide sufficient minimal protection to its inmates, and thus, would set up circumstances where the sheriff and county would be unable to meet their common law, statutory, and constitutional duties to the misdemeanor detainees in defendants' jurisdiction.

14. It was foreseeable to reasonable men in representative positions for defendant that failure to

adequately fund and provide a sufficient jail and failure to sufficiently fund for the keeping and maintenance of prisoners, would result in serious harm, including self-inflicted harm, to persons arrested and jailed for misdemeanors in defendant's jurisdiction.

15. The defendant, despite knowledge of the insufficiencies, via overcrowding, was deliberately indifferent and in callous disregard of the rights of its citizens, to these conditions, when it failed and refused to provide a sufficient jail, failed and refused to properly fund for the proper maintenance and keeping of its misdemeanant arrestees, and failed to arrange and pay for the jailing of inmates in adjacent counties as allowed by law, pursuant to 730 ILCS 125/9 and 125/10.

16. As a result of the defendant's refusal to provide a sufficient jail, and sufficient funds to keep and maintain its prisoners, or jail them in adjacent counties, sheriff Bob Churchich, with the support and approval of defendant, implemented a policy of housing misdemeanant arrestees in city lockups, in violation of state statutes, common law, and applicable regulations, as alleged in Count II, para. 47 through 51, 57, 58, and 59.

17. State regulation, 20 Ill.Adm.Code, Ch. I, Section 720.30(b), limits the time people charged with state offenses can be housed in city lockups, because county jails can better provide the safety and protection required by common law, statutes, and the constitution.

18. The defendant, via responsible officials and the county board, were aware, or should have been aware, that the protection provided by the Madison County Jail for inmates charged with state misdemeanor violations, including protection from self-inflicted injuries, was better performed by the county jail facility, and that the county jail was better

equipped and trained to provide sufficient protection, than in city lockups despite the overcrowding and underfunding.

19. The defendant, via its responsible officials and the county board, did not make arrangements with other counties for the housing of prisoners pursuant to 730 ILCS 125/9 and 125/10, but rather, ratified, supported and approved the policy instituted by the sheriff of housing the misdemeanor detainees in city lockups, in violation of these statutes, applicable state regulations, and its common law and constitutional duties.

20. The acts of the defendant in failing and refusing to provide sufficient jail space, in failing and refusing to fund for the proper keeping and maintaining of misdemeanant arrestees, and for not paying for prisoners to be housed in other counties with sufficient jail space, were deliberately indifferent and in callous disregard of, and in violation of the constitutional rights of the populace of Madison county, its detainees and arrestees, including Steven Hicks.

21. As a proximate result of the failure of defendant to provide a sufficient jail, and sufficient funds for the proper keeping and maintenance of persons arrested for misdemeanor offenses within Madison County, Steven Hicks was housed in a city lockup where he was not sufficiently protected from self-inflicted injuries, resulting in his suicide.

22. As a proximate result of the permitted overcrowding, and resultant policy instituted by sheriff Churchich, ratified, approved and supported by the defendant, Steven Hicks was left in the physical custody of Dennis Mize and the City of Madison.

23. As a proximate result of the above alleged misconduct of the responsible county officials and county board, Steven Hicks suffered his death and injuries by hanging himself on a blanket strip found within the jail cell.

24. The decedent left surviving him as his next of kin, plaintiffs, Christopher M. Hicks, Robert Hicks, and Billy Hicks, all minor children.

25. That none of the next of kin were guilty of any negligent, wilful and wanton, or intentional acts or omissions which contributed to the death of Steven M. Hicks.

26. The minor children of Steven Hicks have suffered loss of pecuniary damages, including support, society, and companionship.

27. Steven Hicks suffered mental and physical pain and agony during the hanging.

28. Plaintiffs Beckhams suffered funeral expenses of the deceased Steven Hicks.

29. This action is brought under 42 USC § 1983.

30. The actions of the responsible officials, and county board were performed under color of law.

31. The actions of the responsible county officials and county board violated Steven Hicks' constitutional rights of due process and equal protection under the Fourteenth Amendment to the United States Constitution.

32. The acts of the defendant were performed recklessly over the callous disregard for plaintiff's federally protected rights.

33. As a proximate result of the violation of his right to be free from unreasonable seizure, due process, and equal protection rights under the Fourth, Fifth and Fourteenth Amendments, Steven Hicks suffered damages as alleged above.

34. Plaintiffs will suffer attorney's fees and costs in the prosecution of this claim.

WHEREFORE, plaintiff, a representative of the next of kin, prays for judgment against the defendant, Bob Churchich, for compensatory damages, in the sum in excess of $500,000.00 plus costs and attorney's fees of suit.

Supreme Court, U.S.
FILED
MAY 12 1999
CLERK

No. 98-1645

IN THE

Supreme Court of the United States

MARTHA D. PAYNE, as mother for the minor child CHRISTOPHER M. HICKS, and for ROBERT HICKS and BILLY HICKS, all minor children of the deceased STEVEN M. HICKS, by and personal representatives of the ESTATE OF STEVEN M. HICKS,

Petitioners

-v-

BOB CHURCHICH, WILLIAM PAPA, and COUNTY OF MADISON, ILLINOIS

Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF RESPONDENTS BOB CHURCHICH, WILLIAM PAPA, AND COUNTY OF MADISON, ILLINOIS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is there a split among the circuits on the issue of the standard of conduct to be applied in a pretrial detainee suicide case?

2. Did the Seventh Circuit correctly follow Supreme Court precedent under 42 U.S.C. § 1983 by first determining the specific constitutional rights allegedly infringed?

3. Did the Seventh Circuit correctly follow Supreme Court precedent under 42 U.S.C. § 1983 by considering only matters related to the decedent's actual injury?

4. Did the Seventh Circuit correctly find on the merits that there was no constitutional violation of the decedent's rights by either Defendant Papa or Defendant Madison County?

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OPINIONS BELOW

The statement of reference to the official and unofficial reports of opinions delivered in the case by other courts or administrative agencies in the Petition for a Writ of Certiorari is satisfactory.

JURISDICTION

The statement of jurisdiction in the Petition for a Writ of Certiorari is satisfactory.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The statement of constitutional provisions and statutes involved in the Petition for a Writ of Certiorari is satisfactory.

STATEMENT OF THE CASE

It is necessary to supplement Petitioner's Statement of the Case as follows:

On June 27, 1995, Defendants filed in the Circuit Court of the Third Judicial Circuit, Madison County, Illinois, a motion for summary judgment in response to Plaintiffs' seventh amended complaint. (Mot. Summ. J.). Defendants' June 27, 1995 motion for summary judgment recites and establishes the following undisputed facts:

a. On August 3, 1991 at 12:02 a.m. Deputy Sheriff William Papa, Jr. (Papa) was dispatched to the Two Brothers Motel in Cottage Hills, Illinois in reference to a report of a subject sleeping under the motel owner's vehicle. (Mot. Summ. J., Exs. A, C).

b. After awakening the sleeping subject, Deputy Papa ran the subject's name through the L.E.A.D.S. computer, and it was determined that the subject was wanted on a

warrant for failure to appear, disorderly conduct, issued by the City of Madison, Illinois. The subject, Plaintiffs' decedent Hicks, was placed under arrest and transported by Deputy Papa to the City of Madison Police Department which confirmed the warrant. (Mot. Summ. J., Exs. A, C).

c. At approximately 1:00 a.m. on August 3, 1991, Deputy Papa transferred custody of the subject, Steven M. Hicks (Hicks), to the City of Madison Police Department and resumed his normal patrol. (Mot. Summ. J., Exs. A, C, E).

d. At the time of his arrest, Hicks appeared intoxicated but was awake, able to stand without assistance, and able to recall and recite his name and date of birth. (Mot. Summ. J., Exs. A, C).

e. At no time while being placed under arrest or being transported to the City of Madison Police Department did Hicks state or manifest conduct to suggest he was suicidal or that he had any intention of harming himself. (Mot. Summ. J., Ex. A).

f. At no time while in the custody of Deputy Papa did Hicks state that he was in need of medical treatment nor did he exhibit signs of trauma or any condition suggesting need for medical treatment. (Mot. Summ. J., Ex. A).

g. While en route to the City of Madison, Hicks was cursing about being arrested and saying that it was all Deputy Papa's fault that he was arrested. Steven Hicks appeared intoxicated and smelled strongly of alcohol. His comments were directed toward Deputy Papa including name calling and general cursing. Deputy Papa testified that the fact that the subject was awake and talking is indicative of the fact that the subject was not in distress or that he was doing okay. At no time did Hicks give any

indication of injury, need of treatment, intent to harm himself or that he was suicidal or suffering a crisis. Hicks made no expression concerning any deaths in his family, and Deputy Papa had no knowledge of any deaths in Hicks' family. (Mot. Summ. J., Ex. A).

h. Hicks was able to stand on his own and was able to identify himself and give his date of birth. Hicks also was able to walk to the police car without assistance, and he was able to exit the police car and walk into the City of Madison Police station under his own power. (Mot. Summ. J., Ex. A).

i. Sometime between the hours of 1:00 a.m. and 4:04 am. while in the exclusive custody and control of the City of Madison Police Department, Steven Hicks died by suffocation after hanging himself with a blanket while locked in the City of Madison, Illinois holding. (Mot. Summ. J., Ex. E).

j. It is the policy of the Madison County Sheriff's Department to transport all misdemeanor and ordinance violators to the police agency which holds the warrant. This policy was promulgated by the Chief Judge of Madison County. (Mot. Summ. J., Exs. B, D).

Petitioner's Statement of the Case contains numerous conclusions disguised as background facts. (Pet., pp. 2-7). Respondents respectfully request the Court to disregard those conclusions. However, some of these conclusory statements require response.

Petitioner's Statement alleges argumentatively that "[c]ompelling evidence of Hicks' possible 'mental disorder' was available to Papa." (Pet., p. 3). However, at no time while being placed under arrest or being transported to the City of Madison Police Department did Hicks state or manifest conduct

to suggest he was suicidal or that he had any intention of harming himself. (Mot. Summ. J., Ex. A). Hicks was awake, talkative, and gave no indication that he was in any kind of distress requiring special treatment for any medical or mental condition (including depression or a suicidal inclination). (Mot. Summ. J., Ex. A).

Petitioner's Statement alleges that the county sheriff "has the duty to report to the County regarding the jail's sufficiency." (Pet., p. 6). However, the county sheriff only has this duty with regard to the Madison County Jail and not the jail of the City of Madison. Furthermore, Petitioner's Statement contains only conclusory allegations in this regard with no supporting facts which supports the Seventh Circuit's conclusion that Petitioner's count against the County was missing "a significant factual predicate." (Pet., p. 6).

ARGUMENT

I. THERE IS NO SPLIT AMONG THE CIRCUITS ON THE ISSUE OF THE STANDARD OF CONDUCT TO BE APPLIED IN A PRETRIAL DETAINEE SUICIDE CASE

In her first Question Presented, Plaintiff Payne for Christopher Hicks, Robert Hicks and Billy Hicks (Payne) asks "Does the Fourth Amendment govern the standard of conduct in the context of maltreatment occurring after arrest ends and pretrial detention begins?" (Pet., p. i). In answering this question, Payne states that "[t]he circuits are irreconcilably split on whether the Fourth Amendment applies after arrest ends and pretrial detention begins." (Pet., p. 7). Payne states that "the conflict not only affects this case, but numerous medical-attention, personal-security and excessive-force pretrial-detainee cases nationwide." (Pet., p. 7).

Payne is correct that there has been some divergence in the circuits on the question of how long Fourth Amendment protection applies to an arrestee. In *Graham v. Connor,* 490 U.S. 386 (1989), the Supreme Court left this issue open: "Our cases have not resolved the question whether the Fourth Amendment continues to provide individuals with protection against the deliberate use of excessive physical force beyond the point at which arrest ends and pretrial detention begins, and we do not attempt to answer that question today." *Graham v. Connor,* 490 U.S. 386, 395 n. 10 (1989). Since that time, the circuits have diverged to some degree on the issue of whether a Fourth Amendment "objective reasonableness" or a Due Process Clause "deliberate indifference" standard should be applied to cases claiming excessive physical force against pretrial detainee.

The divergence on this issue was recently acknowledged by the Fourth Circuit in *Taylor v. McDuffie*:

> Although the Second, Sixth, and Ninth Circuits analyze similar claims under the Fourth Amendment, we recently joined the Fifth, Seventh, and Eleventh Circuits in holding that the Fourth Amendment "does not extend to the alleged mistreatment of arrestees or pretrial detainees in custody." Instead, "we conclud[ed] that the excessive force claims of pretrial detainees are governed by the Due Process Clause of the Fourteenth Amendment."

(citations omitted) *Taylor v. McDuffie,* 155 F.3d 479, 482-83 (4th Cir. 1998), *cert denied,* 119 S.Ct. 1121 (1999).

However, the divergence on this issue has absolutely no bearing on the present case. In this lawsuit, Payne has not made a constitutional claim that excessive force was used against pretrial detainee Hicks. (Pet., pp. 2-4). Rather Payne's allegation is that inadequate custodial care led to Hicks' suicide. (Pet., pp. 4-7).

The circuits do not apply the same analysis to pretrial detainee suicide cases as they do to pretrial detainee excessive force cases. For example, in *Austin v. Hamilton,* 945 F.2d 1155 (1991), the 10th Circuit held that a pretrial detainee being held without a warrant is still protected by the Fourth Amendment prior to a probable cause hearing. *Austin v. Hamilton,* 945 F.2d 1155, 1159-60 (1991). However, in a later case when a plaintiff tried to apply the *Austin* holding to a pretrial detainee suicide situation, *Barrie v. Grand County, Utah,* 119 F.3d 862, (10th Cir., 1997), the Court held that Austin was inapplicable and that in a pretrial detainee suicide case the "deliberate indifference" standard must be applied regardless of whether or not there has been a probable cause determination. *Barrie v. Grand County, Utah,* 119 F.3d 862, 868-69 (10th Cir., 1997). Since failure to prevent a suicide is essentially a failure to provide adequate medical treatment and the standard of care in failure to provide medical treatment pretrial detainee cases is deliberate indifference, the

court followed Supreme Court precedent and held that the deliberate indifference standard should be applied in pretrial detainee suicide cases. *Id.* (citing *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) and *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 244 (1983)). In the present case, the Seventh Circuit recognized that a § 1983 pretrial detainee suicide case calls for applying the same standard as an inadequate medical detention situation. *Payne for Hicks v. Churchich*, 161 F.3d 1030, 1041 (7th Cir. 1998).

Every circuit which has addressed this constitutional issue has applied a standard of "deliberate indifference" rather than Fourth Amendment "objective reasonableness" to the treatment of pretrial detainees who committed suicide. *Bowen v. City of Manchester* 966 F.2d 13, 17 (1st Cir. 1992) (applying the standard that there must have been "deliberate indifference" to the unusually strong risk that a detainee will commit suicide); *Simmons v. City of Philadelphia*, 947 F.2d 1042, 1067 (3rd Cir. 1991), *cert denied*, 503 U.S. 985 (1992) (applying the standard that government actors must not act with "deliberate indifference" with regard to the serious medical needs of a suicidal detainee); *Hill v. Nicodemus*, 979 F.2d 987, 990-91(4th Cir. 1992) (holding that in jail suicide cases prison officials violate the civil rights of inmates when they display "deliberate indifference to serious medical needs"); *Hare v. City of Corinth, Miss.*, 135 F.3d 320, 327 (5th Cir. 1998) (applying "deliberate indifference" test in failure to prevent pretrial detainee suicide); *Roberts v. City of Troy*, 773 F.2d 720, 723-24 (6th Cir. 1985) (applying "deliberate indifference" in failure to prevent pretrial detainee suicide); *Collignon v. Milwaukee County*, 163 F.3d 982, 988-89, (7th Cir. 1998) (holding in case where released pretrial detainee committed suicide that deliberate indifference standard also applies to the decisions of prison medical personnel as to what medical care a prisoner requires); *Liebe v. Norton* 157 F.3d 574, 577 (8th Cir. 1998) (applying deliberate indifference test to

pretrial detainee suicide case); *Anderson v. County of Kern,* 45 F.3d 1310, 1312-13 (9th Cir. 1995) (holding that duty owed to pretrial detainees regarding suicide risk and prevention is not to act with "deliberate indifference" to their needs); *Barrie v. Grand County, Utah,* 119 F.3d 862, 868-69 (10th Cir. 1997) (see discussion above); *Belcher v. City of Foley, Ala.,* 30 F.3d 1390, 1396 (11th Cir. 1994) (holding pretrial detainee's constitutional rights are violated if prison officials show deliberate indifference to the serious medical and psychiatric needs or deliberate indifference to a "strong likelihood" that a detainee will take his own life).

In her brief, Payne states that "[t]he Second, Ninth, and Tenth Circuits conclude the Fourth Amendment protects an individual past the initial point of arrest." (Pet., p. 8). However, as stated above, the Tenth Circuit has held unequivocally that when the case presents claims based on pretrial detainee suicide, the "deliberate indifference" standard must be applied. *Barrie,* 119 F.3d at 868-69. The Ninth Circuit as well has recently applied the "deliberate indifference" test to the duty owed regarding pretrial detainee suicide prevention. *Anderson v. County of Kern,* 45 F.3d 1310, 1312-13 (9th Cir. 1995). Furthermore, the case Payne cites from the Second Circuit to support her point, *Powell v. Gardner,* 891 F.2d 1039, 1044 (2nd Cir. 1989), is one she acknowledges is only applicable to an excessive force situation ("applying Fourth Amendment to claim of excessive force after transport to police custody and declaring its [sic] applicable to pre-arraignment custody"). (Pet., p. 8). Payne presents no authority (and there is none) for the proposition that the Second Circuit applies any standard other than Due Process Clause "deliberate indifference" to a pretrial detainee suicide case.

In her brief, Payne argues that the divergence in the circuits observed with regard to excessive force pretrial cases applies to the present case. (Pet., pp. 7-8). However, since the present case

does not involve excessive force, the divergence in the circuits does not apply. The *Payne* lawsuit over the August 2, 1991 events surrounding Hicks' arrest and later suicide is clearly governed by those cases which hold that a § 1983 lawsuit based on a pretrial detainee suicide requires application of the deliberate indifference state of mind standard.

II. THE SEVENTH CIRCUIT FOLLOWED SUPREME COURT PRECEDENT UNDER 42 U.S.C. § 1983 BY FIRST DETERMINING THE SPECIFIC CONSTITUTIONAL RIGHT ALLEGEDLY INFRINGED.

In her second Question Presented, Payne asks "Do the liberty interests at stake govern the standard of conduct after arrest ends and pretrial detention begins, in the context of a maltreatment claim, regardless of which amendment is applied?" (Pet., p. i). Payne makes the assertion that "[w]hether "deliberate indifference" or "objective reasonableness" applies should depend as much upon the liberty interests at stake, as upon the amendment involved." (Pet., p.13).

Payne claims that the Seventh Circuit has not followed the reasoning in *Graham v. Connor,* 490 U.S. 386 (1989), in this regard. (Pet., p. 14). However, it is *Graham* which provides the answer, albeit in the negative, to Payne's second Question Presented. *Graham* reiterated the rule that § 1983 provides no rights of its own but rather derives relief from other sources:

> Indeed, many courts have seemed to assume, as did the courts below in this case, that there is a generic "right" to be free from excessive force, grounded not in any particular constitutional provision but rather in "basic principles of § 1983 jurisprudence."
>
> We reject this notion that all excessive force claims brought under § 1983 are governed by a single generic standard. As we have said many times, § 1983 "is not itself a source of

> substantive rights," but merely provides "a method for vindicating federal rights elsewhere conferred." *Baker v. McCollan,* 443 U.S. 137, 144, n. 3, 99 S.Ct. 2689, 2694, n. 3, 61 L.Ed.2d 433 (1979). In addressing an excessive force claim brought under § 1983, analysis begins by identifying the specific constitutional right allegedly infringed by the challenged application of force. See *id.*, at 140, 99 S.Ct., at 2692 ("The first inquiry in any § 1983 suit" is "to isolate the precise constitutional violation with which [the defendant] is charged").

Graham v. Connor, 490 U.S. 386, 393-94 (1989). *See also Albright v. Oliver,* 510 U.S. 266, 271 (1994).

Payne argues that the Seventh Circuit should have given more weight to the "liberty interests at stake" and applied an "objective reasonableness" standard rather than a "deliberate indifference" standard. (Pet., p.13). However, as the *Graham* decision makes clear, the proper procedure in a § 1983 suit is to first determine the precise constitutional violation involved. The Seventh Circuit followed the Supreme Court's direction. *Payne*, 161 F.3d at 1039 (7th Cir. 1998). Thus, contrary to Payne's claim, the standard to be applied in a § 1983 lawsuit does depend upon which constitutional provision is being invoked regardless of the characterization of the treatment or the "liberty interest" involved. Furthermore, it should be noted that regardless of whether Payne's argument has merit, Payne fails to state why the Supreme Court should grant certiorari per the guidelines set out in Supreme Court Rule 10.

III. THE SEVENTH CIRCUIT FOLLOWED SUPREME COURT PRECEDENT UNDER 42 U.S.C. § 1983 BY CONSIDERING ONLY MATTERS RELATED TO HICKS' ACTUAL INJURY.

In Payne's third Question Presented, Payne asks "[i]s the standard of conduct after arrest ends and pretrial begins, in the

context of a maltreatment claim, heightened when the injury is suicide?" (Pet., p. i). Payne answers this stating that the Seventh Circuit "arbitrarily heightened" the standard of conduct because the injury in this case was suicide. (Pet., p. 14).

Payne claims that the Seventh Circuit has heightened the standard of conduct required for liability in a detainee suicide case because "[t]he Court does not acknowledge that Papa's failures of duty may foreseeably cause a myriad of harms—not just suicide." (Pet., p. 14). In support of this argument, Payne quotes the Seventh Circuit's statement that "[t]here is no allegation of Mr. Hicks' suicidal tendencies, no claim or evidence of past suicide attempts or warnings from family members of a mental disturbance and suicidal condition." (Pet., p. 14).

This argument is faulty in that it implicitly asserts that this § 1983 lawsuit is about the allegedly foreseeable "myriad of harms" which could have befallen Hicks as a result of the alleged breach of duty by Deputy Papa. However, a lawsuit under § 1983 can only be based on the actual harm caused. "[T]he basic purpose of a § 1983 damages award should be to compensate persons for injuries caused by the deprivation of constitutional rights. For this reason, no compensatory damages may be awarded in a § 1983 suit absent proof of actual injury." *Farrar v. Hobby*, 506 U.S. 103, 112 (1992) (internal citations omitted).

In the present case, the only alleged harm against Hicks was failure to prevent his suicide. (Pet., pp. 2-4). Thus the Seventh Circuit appropriately focused its inquiry on the standard of conduct and duties owed Hicks to prevent his suicide. *Payne*, 161 F.3d at 1042. Whether or not an alleged failure of duty of Deputy Papa could have resulted (although it did not) in some other possible injury is of no relevance in a § 1983 lawsuit due to the actual injury requirement stated in *Farrar*. *Farrar*, 506 U.S. at 112 (1992).

It also should be noted that Payne erroneously states that this matter was "decided at the pleading stage." (p. 15). This statement is incorrect. The decision below as to Deputy Papa was made in response to a motion for summary judgment. *Payne*, 161 F.3d at 1035-36. Furthermore, it again should be noted that regardless of whether Payne's argument has merit, Payne fails to state why the Supreme Court should grant certiorari per guidelines set out in Supreme Court Rule 10.

IV. THE SEVENTH CIRCUIT CORRECTLY FOUND ON THE MERITS THAT THERE WAS NO CONSTITUTIONAL VIOLATION OF HICKS' RIGHTS BY EITHER DEFENDANT PAPA OR DEFENDANT MADISON COUNTY.

A. Claim Against Papa.

Payne alleges that the § 1983 claim against Deputy Papa was sufficient to withstand the motion for summary judgment and that its dismissal should not have been upheld by the Seventh Circuit. (Pet., pp. 15 - 16). The Seventh Circuit upheld the summary judgment in favor of Papa because the actions of Papa failed to meet the "deliberate indifference" standard. *Payne*, 161 F.3d at 1041-42. To meet the deliberate indifference test it must be shown that Deputy Papa knew that Hicks faced a substantial risk of serious harm and disregarded that risk by failing to take reasonable measures to abate it. *See Farmer v. Brennan*, 511 U.S. 825, 847 (1994).

Payne presents no persuasive argument that Papa should have been aware of a substantial risk that Hicks would commit suicide. The facts which Payne claims should have made Papa aware of a substantial suicide risk—Hicks' intoxication, cursing, and his tattoo—are insufficient to raise the issue of whether Papa was aware of a substantial suicide risk. *Payne*, 161 F.3d at 1042. Additionally, Defendants' motion for summary judgment contains affidavits from Deputy Papa and Sheriff Churchich, as

well as deposition testimony from motel owner Jim Bridges supporting Defendants' version of the facts in this case. (Mot. Summ. J., Exs. A, B, F).

Furthermore, Deputy Papa is entitled to qualified immunity for any and all actions taken as part of his official duties as a deputy sheriff of Madison County:

> To withstand the application of qualified immunity, a plaintiff must assert a violation of a constitutional or statutory right; that right must have been clearly established at the time of the violation; and, given the facts most favorable to the plaintiff, there must be no genuine issues of material fact as to whether a reasonable official would have known that the alleged action indeed violated that right.

Liebe v. Norton, 157 F.3d 574, 577 (8th Cir. 1998). *See also Anderson v. Creighton,* 483 U.S. 635, 638 (1987).

Even if a court should now find that Hicks' constitutional rights were violated by the actions of Deputy Papa, the law was not and is not clearly established that Deputy Papa committed any conduct which would infringe upon those constitutional rights. The facts of the record make clear that Deputy Papa arrested Hicks on an outstanding warrant and transported the arrestee to the agency which held the warrant and that there was no evidence of a substantial risk of suicide. (Mot. Summ. J., Exs. A, C). Also, Hicks comitted suicide after he was released from Papa's custody. For a plaintiff to defeat qualified immunity, she must show that a reasonable official would have known that his conduct violated a constitutional right which requires that the officer acted with "deliberate indifference." *Liebe*, 157 F.3d at 577. Since as discussed above, Deputy Papa did not act with deliberate indifference with regard to Hicks' suicide risk, Papa's qualified immunity must stand.

B. Claim Against Madison County.

Payne alleges that the § 1983 claim against Madison County was sufficient to withstand the motion to dismiss and should not have been dismissed by the Seventh Circuit. (Pet., pp. 15 - 16). The Seventh Circuit held that Payne's § 1983 count against Madison County "does not allege a sufficient factual predicate for the essential element that the County's placement of Mr. Hicks in the city jail was done pursuant to a policy that evinces reckless disregard for his safety." *Payne for Hicks v. Churchich,* 161 F.3d 1030, 1043 (7th Cir. 1998).

In a § 1983 action, a municipality may only be held liable for constitutional deprivations if the deprivation is the result of a policy or custom of the municipality. *Board of County Com'rs of Bryan County, Okl. v. Brown,* 520 U.S. 397 (1997); *City of Canton, Ohio v. Harris,* 489 U.S. 378, 385 (1989). Since the standard in a pretrial detainee suicide case is deliberate indifference, it must be shown that the policy or custom is the result of deliberate indifference toward the pretrial suicide risk. To show deliberate indifference, it must be shown that those behind the policy or custom had knowledge of the substantial risk of suicide and disregarded that risk by failing to adjust the policy or custom. *See Farmer v. Brennan,* 511 U.S. 825, 847 (1994).

As the Seventh Circuit stated, Payne's complaint is insufficient to state a § 1983 claim against Madison County. *Payne*, 161 F.3d at 1043; (Pet., pp. 135a-140a). "Although the complaint states that responsible officials knew that better protection against self-inflicted injuries was available at the overcrowded county facility, it does not allege that those officials knew that placement in the city jail exposed Mr. Hicks to a substantial risk of such injury." *Payne*, 161 F.3d at 1043 (7th Cir. 1998). Without the allegations that Madison County officials had knowledge of the substantial risk of suicide and consciously disre-

garded that risk, the charge against Madison County was properly dismissed. *See e.g., Liebe,* 157 F.3d at 578-80.

Payne alleges that the Seventh Circuit's reasoning in dismissing the claims against Madison County violates the principle stated in *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit.* (Pet., pp. 15-16, citing *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit,* 507 U.S. 163 (1993)). The holding of *Leatherman* was that the Fifth Circuit was not permitted to create a heightened pleading standard in § 1983 actions alleging municipal liability. *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit,* 507 U.S. 163, 167 (1993). However, the *Leatherman* holding was not that a federal court can never grant a motion to dismiss in favor of a municipality. The standard granting a motion to dismiss is whether accepting all of the factual allegations in the complaint as true, the complaint still fails to state a sufficient claim. *U.S. v. Gaubert,* 499 U.S. 315, 327 (1991). In this case, the Seventh Circuit has not placed a heightened pleading standard on the plaintiff. Rather, the court correctly concluded that even if all of the factual allegations against Madison County were correct, the complaint still would not sufficiently state a claim.

Furthermore, it again should be noted that regardless of whether Payne's arguments as to these substantive issues has merit, Payne fails to state why the Supreme Court should grant certiorari per its guidelines set out in Supreme Court Rule 10. In fact, there are no "compelling reasons" as required by Rule 10 for the granting of certiorari in this case at all. As discussed above, there is no conflict among the circuits or a state court decision as to the law to be applied to this case, and there is no departure "from the accepted and usual course of judicial proceedings." Furthermore, although the Supreme Court has not issued its own ruling on the question of Constitutional rights in pretrial detainee

suicide cases, it has ruled quite clearly on the duty to provide for the medical needs of pretrial detainees, and the circuit cases on the extent of the duty to prevent a detainee's suicide fit squarely within that precedent. *See Estelle v. Gamble,* 429 U.S. 97, 104 (1976); *City of Revere v. Massachusetts Gen. Hosp.,* 463 U.S. 239, 244 (1983).

CONCLUSION

For the reasons set forth in this Brief, Respondents respectfully request this court deny Petitioner's Petition for a Writ of Certiorari.

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